

AMENDED IN ASSEMBLY JUNE 20, 2006

AMENDED IN SENATE MAY 9, 2006

AMENDED IN SENATE APRIL 20, 2006

AMENDED IN SENATE APRIL 17, 2006

SENATE BILL

No. 1759

Introduced by Senator Ashburn

February 24, 2006

An act to amend Sections 1265.5, 1338.5, 1416.26, ~~1522, 1568.09, 1569.17, 1575.7, 1596.871, 1728.1, 1736.6, 1743.9, and 1797.191~~ of, and to add Chapter 2.6 ~~1522, 1526.5, 1568.07, 1568.09, 1569.17, 1569.24, 1575.7, 1596.871, 1728.1, 1736.6, 1743.9, 1797.191, 106700, and 116735~~ of, to add Sections 1522.08, 1798.212, 106722, and 106877 to, and to add Chapter 2.6 (commencing with Section 1499) to Division 2 of, the Health and Safety Code, and to amend ~~Section 5405~~ Sections 5405 and 9719 of the Welfare and Institutions Code, relating to health and care facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1759, as amended, Ashburn. ~~Health and care facilities: background checks.~~ *checks: fees: inspections.*

Under existing law, the State Department of Health Services licenses and regulates health facilities, including intermediate care facilities. A violation of these provisions is a crime.

Existing law requires the department to secure a criminal record from an appropriate law enforcement agency prior to the initial licensure or renewal of a license of any person or persons to operate or manage an intermediate care facility/developmentally disabled-habilitative, intermediate care facility/developmentally

disabled nursing, or intermediate care facility/developmentally disabled, other than an intermediate care facility/developmentally disabled operated by the state, to determine whether the applicant, facility administrator or manager, any direct care staff, or any other adult living in the same location has ever been convicted of a crime other than a minor traffic violation.

This bill would, instead, require the *department to request the Department of Justice to search for criminal record offender information. It would require that the criminal record clearance* be conducted by the submission of fingerprint images *and related information* to the Department of Justice, would specify that the criminal record shall be complete when the State Department of Health Services has obtained the criminal *offender record-clearance information search response*, and would prohibit direct contact by the applicant with residents until completion of the clearance. By imposing additional licensure requirements on these facilities the bill would change the definition of an existing crime, thus creating a state-mandated local program.

Existing law requires that a criminal record clearance shall be conducted for all nurse assistants by the submission of fingerprint cards to the department for processing at the Department of Justice, and requires completion of the record clearance prior to issuance or renewal of a certificate.

This bill would, instead, require the criminal record clearance be conducted by the submission of fingerprint images *and related information* to the Department of Justice, would specify that the criminal record shall be complete when the State Department of Health Services has obtained the criminal *offender record-clearance information search response*, and would prohibit direct contact by the applicant with residents until completion of the clearance.

This bill would impose an additional requirement for licensing or certification under specified health care provider licensing programs administered by the State Department of Health Services by requiring that any person or entity licensed under one of the applicable programs disclose; any revocation or other final administrative action taken against a license, certificate, registration, or other permission to engage in a profession, vocation, or occupation to operate a facility or institution.

Existing law establishes requirements, administered by the State Department of Health Services, for applicants for a nursing home

facility administrator license, including the requirement that the applicant shall, as part of the application process, submit to the department 2 sets of completed fingerprint cards for a criminal record clearance through the Department of Justice.

This bill would, instead, require the applicant to *electronically* submit ~~electronic~~ fingerprint images *and related information* to the Department of Justice for a criminal ~~clearance~~; *offender record information search*, *would specify that the clearance would not be complete until the offender record information search response is obtained by the department*, and would prohibit the applicant from direct contact with patients until completion of the clearance.

Existing law, the California Adult Day Health Care Act, requires that the State Department of Health Services, prior to issuing a new license under that act, conduct certain procedures in securing a criminal record clearance with respect to the administrator, program director, and fiscal officer of a proposed adult day health care center. Any violation of the provisions of that act are a crime.

This bill would revise those procedures by, among other things, prohibiting a person from direct contact with residents until completion of the criminal record clearance. By revising those procedures this bill would revise the definition of a crime, ~~this~~ resulting in a state-mandated local program.

Existing law, administered by the State Department of Health Services, regulates licensing of home health agencies and private duty nursing agencies and certification of certified home health aides. Existing law requires certain persons, as part of the home health agency licensure process, as well as applicants for home health aid certification, to submit to the department fingerprints for the furnishing of the person's criminal record clearance.

This bill would revise the fingerprint requirements to use the submission of electronic fingerprint ~~records~~ *images and related information* to the Department of Justice.

Under existing law, the State Department of Social Services licenses and regulates various community care facilities, residential care facilities for the elderly and for persons with a chronic, life-threatening illness, and child day care facilities. Existing law requires the department to inspect certain of these facilities within 90 days of initial licensure, to evaluate compliance with applicable rules and regulations, and to assess the facility's continuing ability to meet regulatory requirements.

Under existing law, licensees and other individuals who are present and provide care in these facilities are required to provide fingerprints and the department is required to secure the individual's criminal history, to determine whether he or she has been convicted of a crime other than a minor traffic violation, or convicted of specified sex-related offenses. Under existing law, violation of the provisions governing these facilities is a misdemeanor.

This bill would require an individual to obtain either a criminal record clearance from the Department of Justice or a criminal record exemption from the State Department of Social Services before his or her initial presence in any one of the above categories of facilities. *It would require a person who is required to be fingerprinted to submit fingerprint images and related information to the Department of Justice for a criminal offender record information search.*

By changing the definition of an existing crime, this bill would impose a state-mandated local program.

Existing law requires the Department of Justice to coordinate with the department to establish and implement an automated live-scan processing system for fingerprints in specified offices of the department by July 1, 1999.

This bill would delete that requirement.

The bill would authorize the California Department of Aging, State Department of Health Services, State Department of Alcohol and Drug Programs, State Department of Mental Health, State Department of Social Services, and the Emergency Medical Services Authority to share information with respect to applicants, licensees, certificates, or individuals who have been the subject of any administrative action resulting in the denial, suspension, probation, or revocation of a license, permit, or certificate, or in the exclusion of any person from a facility who is subject to a background check. It would require the State Department of Social Services to maintain a centralized system for the monitoring and tracking of final administrative actions, to be used by those state entities as a part of the background check process.

Existing law requires that, within 90 days after the date of issuance of a license or special permit to operate a community care facility or a residential care facility for the elderly or for persons with chronic life-threatening illnesses, the department inspect the facility.

This bill would require, instead, that this inspection occur within 90 days after a facility accepts its first client for placement following the issuance of a license.

Existing law provides for the licensure and regulation of emergency medical services (EMS) personnel, including the issuance of EMT-P licenses, by local EMS agencies, with oversight by the Emergency Medical Services Authority. Existing law requires the authority to establish a process for the ongoing review and approval of training programs in pediatric first aid, pediatric CPR, and preventive health practices, as specified.

This bill would require that the initial approval of training programs in pediatric first aid, pediatric CPR, and preventive health practices be placed on probation for the first 6 months of the initial 2-year approval cycle.

The bill would require each applicant for an initial EMT-P license, or for renewal of an EMT-P license, to disclose specified information relating to criminal convictions and investigations, and certain disciplinary actions.

Existing law provides for the certification of registered environmental health specialists by the State Department of Health Services. Existing law establishes application, examination, and renewal fees for this certification.

This bill would increase those fee amounts, as specified.

Existing law permits the department, upon recommendation of the Environmental Health Specialist Registration Committee, to suspend, deny, refuse to renew, or revoke the certification of a registered environmental health specialist upon prescribed grounds.

This bill would, in addition, permit the department to deny, amend, revoke, suspend, or restrict that registration a person's background or behavior bears materially or that person's ability to safely perform activities under the registration.

Existing law requires the department to examine and certify persons as to their qualifications to supervise or operate water treatment plants and water distribution systems. Existing law allows the department to suspend, revoke, or refuse to grant or renew such a certificate on specified grounds.

This bill would allow the department, in addition, to deny, amend, revoke, suspend, or restrict such a certification when, in the judgment of the department, a person's background or behavior bears

materially on that person's ability to safely perform activities under the certification.

Existing law provides for the regulation of public water systems by the department. Existing law requires the department to inspect each public water system at least annually.

This bill would require the department, instead, to inspect each public water system either annually, biennially, or every 3 years, depending on the nature of the water source. It would allow the department to inspect public water systems on a more frequent basis.

Existing law establishes within the California Department of Aging, the Office of the State Long-Term Care Ombudsman to promote the development, coordination, and utilization of resources to meet the long-term care needs of older individuals. Existing law requires the office to sponsor a meeting of representatives of approved organizations at least twice each year, and provide training to these representatives as appropriate.

This bill would require that, prior to acceptance by the office as designated ombudsmen, individuals obtain a criminal record clearance that meets the same standards for clearance as required for direct care staff in long-term health care facilities who submit fingerprints pursuant to specified provisions of law. It would require the criminal record clearance to be completed prior to designation as an ombudsman.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.*

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1265.5 of the Health and Safety Code is
- 2 amended to read:
- 3 1265.5. (a) (1) Prior to the initial licensure or renewal of a
- 4 license of any person or persons to operate or manage an
- 5 intermediate care facility/developmentally disabled habilitative,
- 6 an intermediate care facility/developmentally disabled nursing, or

1 an intermediate care facility/developmentally disabled, other than
 2 an intermediate care facility/developmentally disabled operated
 3 by the state that secures criminal record clearances for its
 4 employees through a method other than as specified in this
 5 section or upon the hiring of direct care staff by any of these
 6 facilities, ~~the department shall secure from the Department of~~
 7 ~~Justice a criminal record to determine whether the applicant,~~
 8 *facilities, the department shall request the Department of Justice*
 9 *to search for criminal offender record information to determine*
 10 *whether the applicant, facility administrator or manager, any*
 11 *direct care staff, or any other adult living in the same location,*
 12 *has ever been convicted of a crime other than a minor traffic*
 13 *violation.*

14 (2) The criminal record clearance shall require the applicant to
 15 submit electronic fingerprint images *and related information* of
 16 the facility administrator or manager, and any direct care staff, or
 17 any other adult living in the same location, to the Department of
 18 Justice. Applicants shall be responsible for any cost associated
 19 with *capturing or* transmitting the fingerprint images *and related*
 20 *information.*

21 (3) The criminal record clearance shall be completed prior to
 22 direct staff contact with residents of the facility administrator or
 23 manager, and any direct care staff, or any other adult living in the
 24 same location. A criminal record clearance shall be complete
 25 when the department has obtained the person's criminal-record
 26 ~~information~~ *offender record information search response* from
 27 the Department of Justice and has determined that the person is
 28 not disqualified from engaging in the activity for which clearance
 29 is required.

30 (b) (1) The application for licensure or renewal shall be
 31 denied if the criminal record indicates that the person seeking
 32 initial licensure or renewal of a license referred to in subdivision
 33 (a) has been convicted of a violation or attempted violation of
 34 any one or more of the following Penal Code provisions: Section
 35 187, subdivision (a) of Section 192, Section 203, 205, 206, 207,
 36 209, 210, 210.5, 211, 220, 222, 243.4, 245, 261, 262, or 264.1,
 37 Sections 265 to 267, inclusive, Section 273a, 273d, 273.5, or 285,
 38 subdivisions (c), (d), (f), and (g) of Section 286, Section 288,
 39 subdivisions (c), (d), (f), and (g) of Section 288a, Section 288.5,
 40 289, 289.5, 368, 451, 459, 470, 475, 484, or 484b, Sections 484d

1 to 484j, inclusive, or Section 487, 488, 496, 503, 518, or 666,
2 unless any of the following applies:

3 (A) The person was convicted of a felony and has obtained a
4 certificate of rehabilitation under Chapter 3.5 (commencing with
5 Section 4852.01) of Title 6 of Part 3 of the Penal Code and the
6 information or accusation against the person has been dismissed
7 pursuant to Section 1203.4 of the Penal Code with regard to that
8 felony.

9 (B) The person was convicted of a misdemeanor and the
10 information or accusation against the person has been dismissed
11 pursuant to Section 1203.4 or 1203.4a of the Penal Code.

12 (C) The person was convicted of a felony or a misdemeanor,
13 but has previously disclosed the fact of each conviction to the
14 department and the department has made a determination in
15 accordance with law that the conviction does not disqualify the
16 person.

17 (2) The application for licensure or renewal shall be denied if
18 the criminal record of the person includes a conviction in another
19 state for an offense that, if committed or attempted in this state,
20 would have been punishable as one or more of the offenses set
21 forth in paragraph (1), unless evidence of rehabilitation
22 comparable to the dismissal of a misdemeanor or a certificate of
23 rehabilitation as set forth in subparagraph (A) or (B) of paragraph
24 (1) is provided to the department.

25 (c) If the criminal record of a person described in subdivision
26 (a) indicates any conviction other than a minor traffic violation or
27 other than a conviction listed in subdivision (b), the department
28 may deny the application for licensure or renewal. In determining
29 whether or not to deny the application for licensure or renewal
30 pursuant to this subdivision, the department shall take into
31 consideration the following factors as evidence of good character
32 and rehabilitation:

33 (1) The nature and seriousness of the offense under
34 consideration and its relationship to their employment duties and
35 responsibilities.

36 (2) Activities since conviction, including employment or
37 participation in therapy or education, that would indicate changed
38 behavior.

1 (3) The time that has elapsed since the commission of the
2 conduct or offense referred to in paragraph (1) or (2) and the
3 number of offenses.

4 (4) The extent to which the person has complied with any
5 terms of parole, probation, restitution, or any other sanction
6 lawfully imposed against the person.

7 (5) Any rehabilitation evidence, including character
8 references, submitted by the person.

9 (6) Employment history and current employer
10 recommendations.

11 (7) Circumstances surrounding the commission of the offense
12 that would demonstrate the unlikelihood of repetition.

13 (8) The granting by the Governor of a full and unconditional
14 pardon.

15 (9) A certificate of rehabilitation from a superior court.

16 (d) Nothing in this section shall be construed to require a
17 criminal record check of a person receiving services in an
18 intermediate care facility/developmentally disabled habilitative,
19 intermediate care facility/developmentally disabled-nursing, or
20 intermediate care facility/developmentally disabled.

21 (e) For purposes of this section, “direct care staff” means all
22 facility staff who are trained and experienced in the care of
23 persons with developmental disabilities and who directly provide
24 program and nursing services to clients. Administrative and
25 licensed personnel shall be considered direct care staff when
26 directly providing program and nursing services to clients.
27 Persons employed as consultants and acting as direct care staff
28 shall be subject to the same requirements for a criminal record
29 clearance as other direct care staff. However, the employing
30 facility shall not be required to pay any costs associated with that
31 criminal record clearance.

32 (f) Upon the employment of any person specified in
33 subdivision (a), and prior to any contact with clients or residents,
34 the facility shall ensure that electronic fingerprint images *and*
35 *related information* are submitted to the Department of Justice
36 for the purpose of obtaining a criminal record check.

37 (g) The department shall develop procedures to ensure that
38 any licensee, direct care staff, or certificate holder for whom a
39 criminal record has been obtained pursuant to this section or

1 Section 1338.5 or 1736 shall not be required to obtain multiple
2 criminal record clearances.

3 SEC. 2. Section 1338.5 of the Health and Safety Code is
4 amended to read:

5 1338.5. (a) (1) A criminal record clearance shall be
6 conducted for all nurse assistants by the submission of fingerprint
7 ~~images to the Department of Justice. This criminal record~~
8 ~~clearance shall be completed prior to issuing or renewing a~~
9 ~~certificate, and prior to direct contact with residents. A criminal~~
10 ~~record shall be complete when the department has obtained the~~
11 ~~applicant's criminal record information from the Department of~~
12 ~~Justice, and has determined that the person is not disqualified~~
13 ~~from engaging in the activity for which clearance is required.~~
14 ~~Applicants shall be responsible for any costs associated with~~
15 ~~transmitting the fingerprint images. The fee to cover the~~
16 ~~processing costs of the Department of Justice, not including the~~
17 ~~costs associated with rolling the fingerprint cards, shall not~~
18 ~~images and related information to the Department of Justice.~~
19 ~~This criminal record clearance shall be completed prior to~~
20 ~~issuing or renewing a certificate, and prior to direct contact with~~
21 ~~residents. A criminal record shall be complete when the~~
22 ~~department has obtained the applicant's criminal offender record~~
23 ~~information search response from the Department of Justice, and~~
24 ~~has determined that the person is not disqualified from engaging~~
25 ~~in the activity for which clearance is required. Applicants shall~~
26 ~~be responsible for any costs associated with capturing or~~
27 ~~transmitting the fingerprint images and related information. The~~
28 ~~fee to cover the processing costs of the Department of Justice,~~
29 ~~not including the costs associated with capturing or transmitting~~
30 ~~the fingerprint images and related information, shall not exceed~~
31 ~~thirty-two dollars (\$32) per submission.~~

32 (2) (A) Upon enrollment in a training program for nurse
33 assistant certification, and prior to direct contact with residents, a
34 candidate for training shall submit a training and examination
35 application to the department and submit electronic fingerprint
36 ~~images to receive a criminal record review through the~~
37 ~~Department of Justice. Submission of the fingerprints to the~~
38 ~~images and related information to receive a criminal record~~
39 ~~review through the Department of Justice. Submission of the~~
40 ~~fingerprint images and related information to the Department of~~

1 *Justice for transmission to the* Federal Bureau of Investigation
2 shall be at the discretion of the department. The criminal record
3 shall be completed prior to direct contact with residents by the
4 nurse assistant applicant.

5 (B) New nurse assistant applicants who are unemployed and
6 unable to pay the fee charged by the Department of Justice
7 pursuant to paragraph (1) of subdivision (a) due to financial
8 hardship may request a waiver for a period not to exceed six
9 months. The request for waiver shall be made in writing at the
10 time the fingerprint card is submitted for processing. The
11 applicant shall agree to pay the fee within six months of
12 employment. The failure to pay the fee within the six-month
13 period shall result in the inactivation of the applicant's certificate
14 until the fee is paid in full.

15 ~~(b) Upon receipt of the fingerprints, the Department of Justice~~
16 ~~shall notify the state department of the criminal record~~
17 ~~information, as provided for in this subdivision. If no criminal~~
18 ~~record information has been recorded, the Department of Justice~~
19 ~~shall provide the state department with a statement of that fact. If~~
20 ~~the fingerprints are illegible, the Department of Justice shall,~~
21 ~~within 15 calendar days from receipt of the fingerprints, notify~~
22 ~~the state department of that fact.~~

23 ~~(c) The department shall respond to the applicant and~~
24 ~~employer within 30 days from the date of receipt of the~~
25 ~~fingerprint cards.~~

26 *(b) Upon receipt of the fingerprint images and related*
27 *information, the Department of Justice shall notify the*
28 *department with the applicant's criminal offender record*
29 *information search response, as provided for in this subdivision.*
30 *If no criminal record information has been recorded, the*
31 *Department of Justice shall provide the department with a*
32 *statement of that fact. If the fingerprint images are illegible, the*
33 *Department of Justice shall, within 15 calendar days from*
34 *receipt of the fingerprint images, notify the department of that*
35 *fact.*

36 *(c) The department shall respond to the applicant and*
37 *employer within 30 days from the date of receipt of the response*
38 *described in subdivision (b).*

39 *(d) The department shall receive the response described in*
40 *subdivision (b) prior to certifying a nurse assistant and prior to*

1 *allowing direct contact with residents by the nurse assistant*
2 *applicant.*

3 ~~(d)~~

4 *(e) The use of fingerprint live-scan technology implemented*
5 *by the Department of Justice by the year 1999 shall be used by*
6 *the Department of Justice to generate timely and accurate*
7 *positive fingerprint identification prior to nurse assistant*
8 *certification and prior to direct contact with residents by the*
9 *nurse assistant applicant.*

10 ~~(e)~~

11 *(f) The state department shall develop procedures to ensure*
12 *that any licensee, direct care staff, or certificate holder for whom*
13 *a criminal record has been obtained pursuant to this section or*
14 *Section 1265.5 or 1736 shall not be required to obtain multiple*
15 *criminal record clearances.*

16 *(g) If the department is experiencing a delay in processing the*
17 *renewal of the certified nursing assistant's certification at the*
18 *time of the expiration of the certified nursing assistant's*
19 *certification, the department may extend the expiration of the*
20 *certified nursing assistant's certification for 60 days.*

21 SEC. 3. Section 1416.26 of the Health and Safety Code is
22 amended to read:

23 1416.26. (a) As part of the application process for a nursing
24 ~~home administrator license, an applicant shall submit electronic~~
25 ~~fingerprint images, for a criminal record clearance, to the~~
26 ~~Department of Justice and the Federal Bureau of Investigation.~~
27 ~~The applicant shall provide proof of electronic transmission of~~
28 ~~fingerprints to the Department of Justice and the Federal Bureau~~
29 ~~of Investigation. Upon receipt of the fingerprints, the Department~~
30 ~~of Justice and the Federal Bureau of Investigation shall notify the~~
31 ~~department of the criminal record information. If no criminal~~
32 ~~record information has been recorded, the Department of Justice~~
33 ~~and the Federal Bureau of Investigation shall provide the home~~
34 ~~administrator license, an applicant shall electronically submit~~
35 ~~fingerprint images and related information, for a criminal~~
36 ~~offender record information search, to the Department of Justice~~
37 ~~and the Federal Bureau of Investigation, through the Department~~
38 ~~of Justice. The applicant shall provide proof of electronic~~
39 ~~transmission of his or her fingerprint images and related~~
40 ~~information to the Department of Justice and the Federal Bureau~~

1 of Investigation. Upon receipt of the fingerprint images and
2 related information, the Department of Justice shall notify the
3 department with a state or federal level criminal offender record
4 information search response. If no state or federal level criminal
5 record information has been recorded, the Department of Justice
6 shall provide the department with a statement of that fact.

7 (b) This criminal record clearance shall be completed prior to
8 issuing a license. Applicants shall be responsible for any costs
9 associated with the criminal record clearance. The fee to cover
10 the processing costs of the Department of Justice, not including
11 ~~the costs associated with transmitting the fingerprint images,~~
12 ~~shall not exceed thirty-two dollars (\$32) per card for state~~
13 ~~fingerprints, and shall not exceed twenty-four dollars (\$24) per~~
14 ~~submission for federal fingerprints.~~ *the costs associated with*
15 *capturing or transmitting the fingerprint images and related*
16 *information, shall not exceed thirty-two dollars (\$32) for a state*
17 *level criminal offender record information search, and shall not*
18 *exceed twenty-four dollars (\$24) for a federal level criminal*
19 *offender record information search.*

20 (c) A criminal record clearance shall be completed prior to
21 acceptance of an application by the Nursing Home Administrator
22 Program and prior to the applicant's direct contact with patients.

23 (d) A criminal record clearance shall be complete when the
24 department has obtained the person's criminal ~~record information~~
25 *offender record information search response* from the
26 Department of Justice and has determined that the person is not
27 disqualified from engaging in the activity for which clearance is
28 required.

29 SEC. 4. Chapter 2.6 (commencing with Section 1499) is
30 added to Division 2 of the Health and Safety Code, to read:

31
32 CHAPTER 2.6. USE OF ADMINISTRATIVE ACTION FOR
33 LICENSURE
34

35 1499. (a) Any person or entity licensed or certificated under
36 Chapter 1 (commencing with Section 1200), Chapter 2
37 (commencing with Section 1250), Chapter 2.3 (commencing with
38 Section 1400), Chapter 2.35 (commencing with Section 1416),
39 Chapter 3.3 (commencing with Section 1570), Chapter 8
40 (commencing with Section 1725), Chapter 8.3 (commencing with

1 Section 1743), Chapter 8.5 (commencing with Section 1745),
2 Chapter 8.6 (commencing with Section 1760), or Chapter 11
3 (commencing with Section 1794.01), or under Section 1247.6 of
4 the Business and Professions Code, shall, in addition to all other
5 requirements, disclose as part of the application for the license or
6 certificate any revocation or other final administrative action
7 taken against a license, certificate, registration, or other approval
8 to engage in a profession, vocation, or occupation, or a license or
9 other permission to operate a facility or institution.

10 (b) The department may consider, in determining whether to
11 grant or deny the license or certification, any final revocation or
12 other final administrative action taken against a license,
13 certificate, registration, or other permission to engage in a
14 profession, vocation, or occupation or a license or other
15 permission to operate a facility or institution.

16 SEC. 5. Section 1522 of the Health and Safety Code is
17 amended to read:

18 1522. The Legislature recognizes the need to generate timely
19 and accurate positive fingerprint identification of applicants as a
20 condition of issuing licenses, permits, or certificates of approval
21 for persons to operate or provide direct care services in a
22 community care facility, foster family home, or a certified family
23 home of a licensed foster family agency. Therefore, the
24 ~~Legislature supports the use of the fingerprint live-scan~~
25 ~~technology, as identified in the long-range plan of the~~
26 ~~Department of Justice for fully automating the processing of~~
27 ~~fingerprints and other data by the year 1999, otherwise known as~~
28 ~~the California Crime Information Intelligence System (CAL-CII),~~
29 *Legislature supports use of electronic fingerprint image*
30 *technology*, to be used for applicant fingerprints. It is the intent of
31 the Legislature in enacting this section to require the fingerprints
32 of those individuals whose contact with community care clients
33 may pose a risk to the clients' health and safety. An individual
34 shall be required to obtain either a criminal record clearance ~~from~~
35 ~~the Department of Justice~~ or a criminal record exemption from
36 the State Department of Social Services before his or her initial
37 presence in a community care facility.

38 (a) (1) Before issuing a license or special permit to any person
39 or persons to operate or manage a community care facility, the
40 State Department of Social Services shall secure from an

1 appropriate law enforcement agency a criminal record to
2 determine whether the applicant or any other person specified in
3 subdivision (b) has ever been convicted of a crime other than a
4 minor traffic violation or arrested for any crime specified in
5 Section 290 of the Penal Code, for violating Section 245 or
6 273.5, of the Penal Code, subdivision (b) of Section 273a of the
7 Penal Code, or, prior to January 1, 1994, paragraph (2) of Section
8 273a of the Penal Code, or for any crime for which the
9 department cannot grant an exemption if the person was
10 convicted and the person has not been exonerated.

11 (2) The criminal history information shall include the full
12 criminal record, if any, of those persons, and subsequent arrest
13 information pursuant to Section 11105.2 of the Penal Code.

14 (3) Except during the 2003–04, 2004–05, and 2005–06 fiscal
15 years, neither the Department of Justice nor the State Department
16 of Social Services may charge a fee for the fingerprinting of an
17 applicant for a license or special permit to operate a facility
18 providing nonmedical board, room, and care for six or less
19 children or for obtaining a criminal record of the applicant
20 pursuant to this section.

21 (4) The following shall apply to the criminal record
22 information:

23 (A) If the State Department of Social Services finds that the
24 applicant, or any other person specified in subdivision (b), has
25 been convicted of a crime other than a minor traffic violation, the
26 application shall be denied, unless the director grants an
27 exemption pursuant to subdivision (g).

28 (B) If the State Department of Social Services finds that the
29 applicant, or any other person specified in subdivision (b) is
30 awaiting trial for a crime other than a minor traffic violation, the
31 State Department of Social Services may cease processing the
32 application until the conclusion of the trial.

33 (C) If no criminal record information has been recorded, the
34 Department of Justice shall provide the applicant and the State
35 Department of Social Services with a statement of that fact.

36 (D) If the State Department of Social Services finds after
37 licensure that the licensee, or any other person specified in
38 paragraph (2) of subdivision (b), has been convicted of a crime
39 other than a minor traffic violation, the license may be revoked,

1 unless the director grants an exemption pursuant to subdivision
2 (g).

3 (E) An applicant and any other person specified in subdivision
4 (b) shall submit ~~a second set of fingerprints~~ *fingerprint images*
5 *and related information* to the Department of Justice for the
6 purpose of searching the criminal records of the Federal Bureau
7 of Investigation, in addition to the criminal records search
8 required by this subdivision. If an applicant and all other persons
9 described in subdivision (b) meet all of the conditions for
10 licensure, except receipt of the Federal Bureau of Investigation's
11 ~~criminal history information~~ *offender record information search*
12 *response* for the applicant or any of the persons described in
13 subdivision (b), the department may issue a license if the
14 applicant and each person described in subdivision (b) has signed
15 and submitted a statement that he or she has never been
16 convicted of a crime in the United States, other than a traffic
17 infraction, as defined in paragraph (1) of subdivision (a) of
18 Section 42001 of the Vehicle Code. If, after licensure, the
19 department determines that the licensee or any other person
20 specified in subdivision (b) has a criminal record, the license may
21 be revoked pursuant to Section 1550. The department may also
22 suspend the license pending an administrative hearing pursuant
23 to Section 1550.5.

24 (b) (1) In addition to the applicant, this section shall be
25 applicable to criminal convictions of the following persons:

26 (A) Adults responsible for administration or direct supervision
27 of staff.

28 (B) Any person, other than a client, residing in the facility.

29 (C) Any person who provides client assistance in dressing,
30 grooming, bathing, or personal hygiene. Any nurse assistant or
31 home health aide meeting the requirements of Section 1338.5 or
32 1736.6, respectively, who is not employed, retained, or
33 contracted by the licensee, and who has been certified or
34 recertified on or after July 1, 1998, shall be deemed to meet the
35 criminal record clearance requirements of this section. A certified
36 nurse assistant and certified home health aide who will be
37 providing client assistance and who falls under this exemption
38 shall provide one copy of his or her current certification, prior to
39 providing care, to the community care facility. The facility shall
40 maintain the copy of the certification on file as long as care is

1 being provided by the certified nurse assistant or certified home
2 health aide at the facility. Nothing in this paragraph restricts the
3 right of the department to exclude a certified nurse assistant or
4 certified home health aide from a licensed community care
5 facility pursuant to Section 1558.

6 (D) Any staff person, volunteer, or employee who has contact
7 with the clients.

8 (E) If the applicant is a firm, partnership, association, or
9 corporation, the chief executive officer or other person serving in
10 like capacity.

11 (F) Additional officers of the governing body of the applicant,
12 or other persons with a financial interest in the applicant, as
13 determined necessary by the department by regulation. The
14 criteria used in the development of these regulations shall be
15 based on the person's capability to exercise substantial influence
16 over the operation of the facility.

17 (2) The following persons are exempt from the requirements
18 applicable under paragraph (1):

19 (A) A medical professional as defined in department
20 regulations who holds a valid license or certification from the
21 person's governing California medical care regulatory entity and
22 who is not employed, retained, or contracted by the licensee if all
23 of the following apply:

24 (i) The criminal record of the person has been cleared as a
25 condition of licensure or certification by the person's governing
26 California medical care regulatory entity.

27 (ii) The person is providing time-limited specialized clinical
28 care or services.

29 (iii) The person is providing care or services within the
30 person's scope of practice.

31 (iv) The person is not a community care facility licensee or an
32 employee of the facility.

33 (B) A third-party repair person or similar retained contractor if
34 all of the following apply:

35 (i) The person is hired for a defined, time-limited job.

36 (ii) The person is not left alone with clients.

37 (iii) When clients are present in the room in which the
38 repairperson or contractor is working, a staff person who has a
39 criminal record clearance or exemption is also present.

1 (C) Employees of a licensed home health agency and other
2 members of licensed hospice interdisciplinary teams who have a
3 contract with a client or resident of the facility and are in the
4 facility at the request of that client or resident's legal
5 decisionmaker. The exemption does not apply to a person who is
6 a community care facility licensee or an employee of the facility.

7 (D) Clergy and other spiritual caregivers who are performing
8 services in common areas of the community care facility or who
9 are advising an individual client at the request of, or with the
10 permission of, the client or legal decisionmaker, are exempt from
11 fingerprint and criminal background check requirements imposed
12 by community care licensing. This exemption does not apply to a
13 person who is a community care licensee or employee of the
14 facility.

15 (E) Members of fraternal, service, or similar organizations
16 who conduct group activities for clients if all of the following
17 apply:

18 (i) Members are not left alone with clients.

19 (ii) Members do not transport clients off the facility premises.

20 (iii) The same organization does not conduct group activities
21 for clients more often than defined by the department's
22 regulations.

23 (3) In addition to the exemptions in paragraph (2), the
24 following persons in foster family homes, certified family homes,
25 and small family homes are exempt from the requirements
26 applicable under paragraph (1):

27 (A) Adult friends and family of the licensed or certified foster
28 parent, who come into the home to visit for a length of time no
29 longer than defined by the department in regulations, provided
30 that the adult friends and family of the licensee are not left alone
31 with the foster children. However, the licensee, acting as a
32 reasonable and prudent parent, as defined in paragraph (2) of
33 subdivision (a) of Section 362.04 of the Welfare and Institutions
34 Code, may allow his or her adult friends and family to provide
35 short-term care to the foster child and act as an appropriate
36 occasional short-term babysitter for the child.

37 (B) Parents of a foster child's friends when the foster child is
38 visiting the friend's home and the friend, licensed or certified
39 foster parent, or both are also present. However, the licensee,
40 acting as a reasonable and prudent parent, may allow the parent

1 of the foster child's friends to act as an appropriate short-term
2 babysitter for the child without the friend being present.

3 (C) Individuals who are engaged by any licensed or certified
4 foster parent to provide short-term care to the child for periods
5 not to exceed 24 hours. Caregivers shall use a reasonable and
6 prudent parent standard in selecting appropriate individuals to act
7 as appropriate occasional short-term babysitters.

8 (4) In addition to the exemptions specified in paragraph (2),
9 the following persons in adult day care and adult day support
10 centers are exempt from the requirements applicable under
11 paragraph (1):

12 (A) Unless contraindicated by the client's individualized
13 program plan (IPP) or needs and service plan, a spouse,
14 significant other, relative, or close friend of a client, or an
15 attendant or a facilitator for a client with a developmental
16 disability if the attendant or facilitator is not employed, retained,
17 or contracted by the licensee. This exemption applies only if the
18 person is visiting the client or providing direct care and
19 supervision to the client.

20 (B) A volunteer if all of the following applies:

21 (i) The volunteer is supervised by the licensee or a facility
22 employee with a criminal record clearance or exemption.

23 (ii) The volunteer is never left alone with clients.

24 (iii) The volunteer does not provide any client assistance with
25 dressing, grooming, bathing, or personal hygiene other than
26 washing of hands.

27 (5) (A) In addition to the exemptions specified in paragraph
28 (2), the following persons in adult residential and social
29 rehabilitation facilities, unless contraindicated by the client's
30 individualized program plan (IPP) or needs and services plan, are
31 exempt from the requirements applicable under paragraph (1): a
32 spouse, significant other, relative, or close friend of a client, or an
33 attendant or a facilitator for a client with a developmental
34 disability if the attendant or facilitator is not employed, retained,
35 or contracted by the licensee. This exemption applies only if the
36 person is visiting the client or providing direct care and
37 supervision to that client.

38 (B) Nothing in this subdivision shall prevent a licensee from
39 requiring a criminal record clearance of any individual exempt

1 from the requirements of this section, provided that the
2 individual has client contact.

3 (6) Any person similar to those described in this subdivision,
4 as defined by the department in regulations.

5 (c) (1) Subsequent to initial licensure, any person specified in
6 subdivision (b) and not exempted from fingerprinting shall, as a
7 condition to employment, residence, or presence in a community
8 care facility, be fingerprinted and sign a declaration under
9 penalty of perjury regarding any prior criminal convictions. The
10 licensee shall submit these fingerprints to the Department of
11 Justice, along with a second set of fingerprints for the purpose of
12 searching the records of the Federal Bureau of Investigation, or
13 to comply with paragraph (1) of subdivision (h), prior to the
14 person's employment, residence, or initial presence in the
15 community care facility. These fingerprints shall be on a card
16 provided by the State Department of Social Services or sent by
17 electronic transmission in a manner approved by the State
18 Department of Social Services and the Department of Justice for
19 the purpose of obtaining a permanent set of fingerprints, and
20 shall be submitted to the Department of Justice by the licensee. A
21 licensee's failure to submit fingerprints to the Department of
22 Justice shall result in the citation of a deficiency and the
23 immediate assessment of civil penalties in the amount of one
24 hundred dollars (\$100) per violation, per day for a maximum of
25 five days, unless the violation is a second or subsequent violation
26 within a 12-month period in which case the civil penalties shall
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1 be in the amount of one hundred dollars (\$100) per violation for
 2 a maximum of 30 days, and shall be grounds for disciplining the
 3 licensee pursuant to Section 1550. The department may assess
 4 civil penalties for continued violations as ~~permitted by Section~~
 5 ~~1548. The fingerprints shall then be submitted to the State~~
 6 ~~Department of Social Services for permitted by Section 1548.~~
 7 *The fingerprint images and related information shall then be*
 8 *transmitted to the Department of Justice for processing.* Upon
 9 request of the licensee, who shall enclose a self-addressed
 10 stamped postcard for this purpose, the Department of Justice
 11 shall verify receipt of the fingerprints.

12 (2) Within 14 calendar days of the receipt of the ~~fingerprints~~
 13 *fingerprint images*, the Department of Justice shall notify the
 14 State Department of Social Services of the criminal record
 15 information, as provided for in subdivision (a). If no criminal
 16 record information has been recorded, the Department of Justice
 17 shall provide the licensee and the State Department of Social
 18 Services with a statement of that fact within 14 calendar days of
 19 receipt of the ~~fingerprints~~ *fingerprint images*. Documentation of
 20 the individual's clearance or exemption shall be maintained by
 21 the licensee and be available for inspection. If new ~~fingerprints~~
 22 *fingerprint images* are required for processing, the Department of
 23 Justice shall, within 14 calendar days from the date of receipt of
 24 the fingerprints, notify the licensee that the fingerprints were
 25 ~~illegible. When live-scan technology is operational, as defined in~~
 26 ~~Section 1522.04, the Department of Justice shall notify the State~~
 27 ~~Department of Social Services, as required by that section, and~~
 28 ~~illegible. The Department of Justice shall notify the State~~
 29 ~~Department of Social Services, as required by Section 1522.04,~~
 30 *and shall also notify the licensee by mail, within 14 days of*
 31 *electronic transmission of the fingerprints to the Department of*
 32 *Justice, if the person has no criminal history recorded. A*
 33 *violation of the regulations adopted pursuant to Section 1522.04*
 34 *shall result in the citation of a deficiency and an immediate*
 35 *assessment of civil penalties in the amount of one hundred*
 36 *dollars (\$100) per violation, per day for a maximum of five days,*
 37 *unless the violation is a second or subsequent violation within a*
 38 *12-month period in which case the civil penalties shall be in the*
 39 *amount of one hundred dollars (\$100) per violation for a*
 40 *maximum of 30 days, and shall be grounds for disciplining the*

1 licensee pursuant to Section 1550. The department may assess
2 civil penalties for continued violations as permitted by Section
3 1548.

4 (3) Except for persons specified in paragraph (2) of
5 subdivision (b), the licensee shall endeavor to ascertain the
6 previous employment history of persons required to be
7 fingerprinted under this subdivision. If it is determined by the
8 State Department of Social Services, on the basis of the
9 ~~fingerprints~~ *fingerprint images and related information*
10 submitted to the Department of Justice, that the person has been
11 convicted of, or is awaiting trial for, a sex offense against a
12 minor, or has been convicted for an offense specified in Section
13 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony,
14 the State Department of Social Services shall notify the licensee
15 to act immediately to terminate the person's employment,
16 remove the person from the community care facility, or bar the
17 person from entering the community care facility. The State
18 Department of Social Services may subsequently grant an
19 exemption pursuant to subdivision (g). If the conviction or arrest
20 was for another crime, except a minor traffic violation, the
21 licensee shall, upon notification by the State Department of
22 Social Services, act immediately to either (A) terminate the
23 person's employment, remove the person from the community
24 care facility, or bar the person from entering the community care
25 facility; or (B) seek an exemption pursuant to subdivision (g).
26 The State Department of Social Services shall determine if the
27 person shall be allowed to remain in the facility until a decision
28 on the exemption is rendered. A licensee's failure to comply with
29 the department's prohibition of employment, contact with clients,
30 or presence in the facility as required by this paragraph shall be
31 grounds for disciplining the licensee pursuant to Section 1550.

32 (4) The department may issue an exemption on its own motion
33 pursuant to subdivision (g) if the person's criminal history
34 indicates that the person is of good character based on the age,
35 seriousness, and frequency of the conviction or convictions. The
36 department, in consultation with interested parties, shall develop
37 regulations to establish the criteria to grant an exemption
38 pursuant to this paragraph.

39 (5) Concurrently with notifying the licensee pursuant to
40 paragraph (3), the department shall notify the affected individual

1 of his or her right to seek an exemption pursuant to subdivision
2 (g). The individual may seek an exemption only if the licensee
3 terminates the person's employment or removes the person from
4 the facility after receiving notice from the department pursuant to
5 paragraph (3).

6 (d) (1) Before issuing a license, special permit, or certificate
7 of approval to any person or persons to operate or manage a
8 foster family home or certified family home as described in
9 Section 1506, the State Department of Social Services or other
10 approving authority shall secure from an appropriate law
11 enforcement agency a criminal record to determine whether the
12 applicant or any person specified in subdivision (b) has ever been
13 convicted of a crime other than a minor traffic violation or
14 arrested for any crime specified in Section 290 of the Penal
15 Code, for violating Section 245 or 273.5, subdivision (b) of
16 Section 273a or, prior to January 1, 1994, paragraph (2) of
17 Section 273a of the Penal Code, or for any crime for which the
18 department cannot grant an exemption if the person was
19 convicted and the person has not been exonerated.

20 (2) The criminal history information shall include the full
21 criminal record, if any, of those persons.

22 (3) Neither the Department of Justice nor the State Department
23 of Social Services may charge a fee for the fingerprinting of an
24 applicant for a license, special permit, or certificate of approval
25 described in this subdivision. The record, if any, shall be taken
26 into consideration when evaluating a prospective applicant.

27 (4) The following shall apply to the criminal record
28 information:

29 (A) If the applicant or other persons specified in subdivision
30 (b) have convictions that would make the applicant's home unfit
31 as a foster family home or a certified family home, the license,
32 special permit, or certificate of approval shall be denied.

33 (B) If the State Department of Social Services finds that the
34 applicant, or any person specified in subdivision (b) is awaiting
35 trial for a crime other than a minor traffic violation, the State
36 Department of Social Services or other approving authority may
37 cease processing the application until the conclusion of the trial.

38 (C) For the purposes of this subdivision, a criminal record
39 clearance provided under Section 8712 of the Family Code may
40 be used by the department or other approving agency.

1 (D) An applicant for a foster family home license or for
2 certification as a family home, and any other person specified in
3 ~~subdivision (b), shall submit a set of fingerprints to the~~
4 ~~Department of Justice for the purpose of searching the criminal~~
5 ~~records of the Federal Bureau of Investigation, in addition to the~~
6 ~~subdivision (b), shall submit a set of fingerprint images and~~
7 ~~related information to the Department of Justice and the Federal~~
8 ~~Bureau of Investigation, through the Department of Justice, for a~~
9 ~~state and federal level criminal offender record information~~
10 ~~search, in addition to the criminal records search required by~~
11 ~~subdivision (a). If an applicant meets all other conditions for~~
12 ~~licensure, except receipt of the Federal Bureau of Investigation's~~
13 ~~criminal history information for the applicant and all persons~~
14 ~~described in subdivision (b), the department may issue a license,~~
15 ~~or the foster family agency may issue a certificate of approval, if~~
16 ~~the applicant, and each person described in subdivision (b), has~~
17 ~~signed and submitted a statement that he or she has never been~~
18 ~~convicted of a crime in the United States, other than a traffic~~
19 ~~infraction, as defined in paragraph (1) of subdivision (a) of~~
20 ~~Section 42001 of the Vehicle Code. If, after licensure or~~
21 ~~certification, the department determines that the licensee,~~
22 ~~certified foster parent, or any person specified in subdivision (b)~~
23 ~~has a criminal record, the license may be revoked pursuant to~~
24 ~~Section 1550 and the certificate of approval revoked pursuant to~~
25 ~~subdivision (b) of Section 1534. The department may also~~
26 ~~suspend the license pending an administrative hearing pursuant~~
27 ~~to Section 1550.5.~~

28 (5) Any person specified in this subdivision shall, as a part of
29 the application, be fingerprinted and sign a declaration under
30 penalty of perjury regarding any prior criminal convictions or
31 arrests for any crime against a child, spousal or cohabitant abuse
32 or, any crime for which the department cannot grant an
33 exemption if the person was convicted and shall submit these
34 fingerprints to the licensing agency or other approving authority.

35 (6) (A) ~~The foster family agency shall obtain fingerprints~~
36 ~~from certified home applicants and from persons specified in~~
37 ~~subdivision (b) and shall submit them directly to the Department~~
38 ~~of Justice or send them by electronic transmission in a manner~~
39 ~~approved by the State Department of Social Services. A foster~~
40 ~~family home licensee or foster family agency shall submit these~~

1 fingerprints to the Department of Justice, along with a second set
2 of fingerprints for the purpose of searching the records of the
3 Federal Bureau of Investigation or to comply with paragraph (1)
4 of subdivision (b) prior to the person's employment, residence, or
5 initial presence. A foster family agency's failure to submit
6 fingerprints fingerprint images and related information from
7 certified home applicants and from persons specified in
8 subdivision (b) and shall submit them directly to the Department
9 of Justice by electronic transmission in a manner approved by
10 the State Department of Social Services and the Department of
11 Justice. A foster family home licensee or foster family agency
12 shall submit these fingerprint images and related information to
13 the Department of Justice and the Federal Bureau of
14 Investigation, through the Department of Justice, for a state and
15 federal level criminal offender record information search, or to
16 comply with paragraph (1) of subdivision (b) prior to the
17 person's employment, residence, or initial presence in the foster
18 family home or certified family home. A foster family agency's
19 failure to submit fingerprint images and related information to
20 the Department of Justice, or comply with paragraph (1) of
21 subdivision (h), as required in this section, shall result in a
22 citation of a deficiency, and the immediate civil penalties of one
23 hundred dollars (\$100) per violation, per day for a maximum of
24 five days, unless the violation is a second or subsequent violation
25 within a 12-month period in which case the civil penalties shall
26 be in the amount of one hundred dollars (\$100) per violation for
27 a maximum of 30 days, and shall be grounds for disciplining the
28 licensee pursuant to Section 1550. A violation of the regulation
29 adopted pursuant to Section 1522.04 shall result in the citation of
30 a deficiency and an immediate assessment of civil penalties in
31 the amount of one hundred dollars (\$100) per violation, per day
32 for a maximum of five days, unless the violation is a second or
33 subsequent violation within a 12-month period in which case the
34 civil penalties shall be in the amount of one hundred dollars
35 (\$100) per violation for a maximum of 30 days, and shall be
36 grounds for disciplining the foster family agency pursuant to
37 Section 1550. A licensee's failure to submit fingerprints
38 fingerprint images and related information to the Department of
39 Justice, or comply with paragraph (1) of subdivision (h), as
40 required in this section, may result in the citation of a deficiency

1 and immediate civil penalties of one hundred dollars (\$100) per
2 violation. A licensee's violation of regulations adopted pursuant
3 to Section 1522.04 may result in the citation of a deficiency and
4 an immediate assessment of civil penalties in the amount of one
5 hundred dollars (\$100) per violation. The State Department of
6 Social Services may assess penalties for continued violations, as
7 ~~permitted by Section 1548. The fingerprints shall then be~~
8 ~~submitted to the State Department of Social Services for~~
9 ~~permitted by Section 1548. The fingerprint images and related~~
10 ~~information shall then be transmitted to the Department of~~
11 ~~Justice for processing.~~

12 (B) Upon request of the licensee, who shall enclose a
13 self-addressed envelope for this purpose, the Department of
14 Justice shall verify receipt of the fingerprints. Within five
15 working days of the receipt of the criminal record or information
16 regarding criminal convictions from the Department of Justice,
17 the department shall notify the applicant of any criminal arrests
18 or convictions. If no arrests or convictions are recorded, the
19 Department of Justice shall provide the foster family home
20 licensee or the foster family agency with a statement of that fact
21 concurrent with providing the information to the State
22 Department of Social Services.

23 (7) If the State Department of Social Services finds that the
24 applicant, or any other person specified in subdivision (b), has
25 been convicted of a crime other than a minor traffic violation, the
26 application shall be denied, unless the director grants an
27 exemption pursuant to subdivision (g).

28 (8) If the State Department of Social Services finds after
29 licensure or the granting of the certificate of approval that the
30 licensee, certified foster parent, or any other person specified in
31 paragraph (2) of subdivision (b), has been convicted of a crime
32 other than a minor traffic violation, the license or certificate of
33 approval may be revoked by the department or the foster family
34 agency, whichever is applicable, unless the director grants an
35 exemption pursuant to subdivision (g). A licensee's failure to
36 comply with the department's prohibition of employment,
37 contact with clients, or presence in the facility as required by
38 paragraph (3) of subdivision (c) shall be grounds for disciplining
39 the licensee pursuant to Section 1550.

1 (e) The State Department of Social Services may not use a
2 record of arrest to deny, revoke, or terminate any application,
3 license, employment, or residence unless the department
4 investigates the incident and secures evidence, whether or not
5 related to the incident of arrest, that is admissible in an
6 administrative hearing to establish conduct by the person that
7 may pose a risk to the health and safety of any person who is or
8 may become a client. The State Department of Social Services is
9 authorized to obtain any arrest or conviction records or reports
10 from any law enforcement agency as necessary to the
11 performance of its duties to inspect, license, and investigate
12 community care facilities and individuals associated with a
13 community care facility.

14 (f) (1) For purposes of this section or any other provision of
15 this chapter, a conviction means a plea or verdict of guilty or a
16 conviction following a plea of nolo contendere. Any action that
17 the State Department of Social Services is permitted to take
18 following the establishment of a conviction may be taken when
19 the time for appeal has elapsed, when the judgment of conviction
20 has been affirmed on appeal, or when an order granting probation
21 is made suspending the imposition of sentence, notwithstanding
22 a subsequent order pursuant to Sections 1203.4 and 1203.4a of
23 the Penal Code permitting the person to withdraw his or her plea
24 of guilty and to enter a plea of not guilty, or setting aside the
25 verdict of guilty, or dismissing the accusation, information, or
26 indictment. For purposes of this section or any other provision of
27 this chapter, the record of a conviction, or a copy thereof certified
28 by the clerk of the court or by a judge of the court in which the
29 conviction occurred, shall be conclusive evidence of the
30 conviction. For purposes of this section or any other provision of
31 this chapter, the arrest disposition report certified by the
32 Department of Justice, or documents admissible in a criminal
33 action pursuant to Section 969b of the Penal Code, shall be prima
34 facie evidence of the conviction, notwithstanding any other
35 provision of law prohibiting the admission of these documents in
36 a civil or administrative action.

37 (2) For purposes of this section or any other provision of this
38 chapter, the department shall consider criminal convictions from
39 another state or federal court as if the criminal offense was
40 committed in this state.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for a license, special permit, or certificate of approval as specified in paragraphs (4) and (5) of subdivision (d), or for employment, residence, or presence in a community care facility as specified in paragraphs (3), (4), and (5) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) (i) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(ii) Notwithstanding clause (i), the director may grant an exemption regarding the conviction for an offense described in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, if the employee or prospective employee has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest

1 information unless the department complies with the
2 requirements of Section 1558.

3 (h) (1) For purposes of compliance with this section, the
4 department may permit an individual to transfer a current
5 criminal record clearance, as defined in subdivision (a), from one
6 facility to another, as long as the criminal record clearance has
7 been processed through a state licensing district office, and is
8 being transferred to another facility licensed by a state licensing
9 district office. The request shall be in writing to the State
10 Department of Social Services, and shall include a copy of the
11 person's driver's license or valid identification card issued by the
12 Department of Motor Vehicles, or a valid photo identification
13 issued by another state or the United States government if the
14 person is not a California resident. Upon request of the licensee,
15 who shall enclose a self-addressed envelope for this purpose, the
16 State Department of Social Services shall verify whether the
17 individual has a clearance that can be transferred.

18 (2) The State Department of Social Services shall hold
19 criminal record clearances in its active files for a minimum of
20 two years after an employee is no longer employed at a licensed
21 facility in order for the criminal record clearance to be
22 transferred.

23 (3) The following shall apply to a criminal record clearance or
24 exemption from the department or a county office with
25 department delegated licensing authority:

26 (A) A county office with department delegated licensing
27 authority may accept a clearance or exemption from the
28 department.

29 (B) The department may accept a clearance or exemption from
30 any county office with department delegated licensing authority.

31 (C) A county office with department delegated licensing
32 authority may accept a clearance or exemption from any other
33 county office with department delegated licensing authority.

34 (4) With respect to notifications issued by the Department of
35 Justice pursuant to Section 11105.2 of the Penal Code concerning
36 an individual whose criminal record clearance was originally
37 processed by the department or a county office with department
38 delegated licensing authority, all of the following shall apply:

39 (A) The Department of Justice shall process a request from the
40 department or a county office with department delegated

1 licensing authority to receive the notice only if all of the
2 following conditions are met:

3 (i) The request shall be submitted to the Department of Justice
4 by the agency to be substituted to receive the notification.

5 (ii) The request shall be for the same applicant type as the
6 type for which the original clearance was obtained.

7 (iii) The request shall contain all prescribed data elements and
8 format protocols pursuant to a written agreement between the
9 department and the Department of Justice.

10 (B) (i) On or before January 7, 2005, the department shall
11 notify the Department of Justice of all county offices that have
12 department delegated licensing authority.

13 (ii) The department shall notify the Department of Justice
14 within 15 calendar days of the date on which a new county office
15 receives department delegated licensing authority or a county's
16 delegated licensing authority is rescinded.

17 (C) The Department of Justice shall charge the department or
18 a county office with department delegated licensing authority a
19 fee for each time a request to substitute the recipient agency is
20 received for purposes of this paragraph. This fee shall not exceed
21 the cost of providing the service.

22 (i) The full criminal record obtained for purposes of this
23 section may be used by the department or by a licensed adoption
24 agency as a clearance required for adoption purposes.

25 (j) If a licensee or facility is required by law to deny
26 employment or to terminate employment of any employee based
27 on written notification from the state department that the
28 employee has a prior criminal conviction or is determined
29 unsuitable for employment under Section 1558, the licensee or
30 facility shall not incur civil liability or unemployment insurance
31 liability as a result of that denial or termination.

32 ~~(k) (1) The Department of Justice shall coordinate with the~~
33 ~~State Department of Social Services to establish and implement~~
34 ~~an automated live-scan processing system for fingerprints in the~~
35 ~~district offices of the Community Care Licensing Division of the~~
36 ~~State Department of Social Services by July 1, 1999. These~~
37 ~~live-scan processing units shall be connected to the main system~~
38 ~~at the Department of Justice by July 1, 1999, and shall become~~
39 ~~part of that department's pilot project in accordance with its~~
40 ~~long-range plan. The State Department of Social Services may~~

1 charge a fee for the costs of processing a set of live-scan
2 fingerprints.

3 (2) ~~The Department of Justice shall provide a report to the~~
4 ~~Senate and Assembly fiscal committees, the Assembly Human~~
5 ~~Services Committee, and to the Senate Health and Human~~
6 ~~Services Committee by April 15, 1999, regarding the completion~~
7 ~~of backlogged criminal record clearance requests for all facilities~~
8 ~~licensed by the State Department of Social Services and the~~
9 ~~progress on implementing the automated live-scan processing~~
10 ~~system in the two district offices pursuant to paragraph (1).~~

11 (k) *The State Department of Social Services may charge a fee*
12 *for the costs of processing electronic fingerprint images and*
13 *related information.*

14 (l) Amendments to this section made in the 1999 portion of the
15 1999–2000 Regular Session shall be implemented commencing
16 60 days after the effective date of the act amending this section in
17 the 1999 portion of the 1999–2000 Regular Session, except that
18 those provisions for the submission of fingerprints for searching
19 the records of the Federal Bureau of Investigation shall be
20 implemented 90 days after the effective date of that act.

21 SEC. 6. *Section 1522.08 is added to the Health and Safety*
22 *Code, to read:*

23 1522.08. (a) *In order to protect the health and safety of*
24 *persons receiving care or services from individuals or facilities*
25 *licensed or certified by the state, the California Department of*
26 *Aging, State Department of Health Services, State Department of*
27 *Alcohol and Drug Programs, State Department of Mental*
28 *Health, State Department of Social Services, and the Emergency*
29 *Medical Services Authority may share information with respect*
30 *to applicants, licensees, certificates, or individuals who have*
31 *been the subject of any administrative action resulting in the*
32 *denial, suspension, probation, or revocation of a license, permit,*
33 *or certificate, or in the exclusion of any person from a facility*
34 *who is subject to a background check, as otherwise provided by*
35 *law. The State Department of Social Services shall maintain a*
36 *centralized system for the monitoring and tracking of final*
37 *administrative actions, to be used by the California Department*
38 *of Aging, State Department of Health Services, State Department*
39 *of Alcohol and Drug Programs, State Department of Mental*
40 *Health, State Department of Social Services, and the Emergency*

1 *Medical Services Authority as a part of the background check*
2 *process.*

3 *(b) The State Department of Social Services, in consultation*
4 *with the other departments under the jurisdiction of the*
5 *California Health and Human Services Agency, may adopt*
6 *regulations to implement this section.*

7 *(c) The State Department of Social Services may charge a fee*
8 *to departments under the jurisdiction of the California Health*
9 *and Human Services Agency sufficient to cover the cost of*
10 *providing those departments with the final administrative action*
11 *specified in subdivision (a).*

12 *(d) For the purposes of this section and Section 1499,*
13 *“administrative action” means any proceeding initiated by the*
14 *California Department of Aging, State Department of Health*
15 *Services, State Department of Alcohol and Drug Programs, State*
16 *Department of Mental Health, State Department of Social*
17 *Services, and the Emergency Medical Services Authority to*
18 *determine the rights and duties of an applicant, licensee, or other*
19 *individual or entity over which the department has jurisdiction.*
20 *“Administrative action” may include, but is not limited to, action*
21 *involving the denial of an application for, or the suspension or*
22 *revocation of, any license, special permit, administrator*
23 *certificate, criminal record clearance, or exemption.*

24 *SEC. 7. Section 1526.5 of the Health and Safety Code is*
25 *amended to read:*

26 *1526.5. (a) Within 90 days after the date of a facility accepts*
27 *its first client for placement following the issuance of a license or*
28 *special permit pursuant to Section 1525, the department shall*
29 *conduct an inspection of inspect the facility for which the license*
30 *or special permit was issued. The licensee shall, within five*
31 *business days after accepting its first client for placement, notify*
32 *the department that the facility has commenced operating. Foster*
33 *family homes are exempt from the provisions of this subdivision.*

34 *(b) ~~After the~~ The inspection required by subdivision (a), the*
35 *department may inspect the facility shall be conducted to*
36 *evaluate compliance with rules and regulations and to assess the*
37 *facility’s continuing ability to meet regulatory requirements. The*
38 *department may take appropriate remedial action as authorized*
39 *by this chapter.*

1 *SEC. 8. Section 1568.07 of the Health and Safety Code is*
2 *amended to read:*

3 1568.07. (a) (1) ~~Within 90 days of~~ *after a facility accepts its*
4 *first resident for placement following its* initial licensure, the
5 department shall inspect the facility to evaluate compliance with
6 rules and regulations and to assess the facility's continuing
7 ability to meet regulatory requirements. *The licensee shall notify*
8 *the department, within five business days after accepting its first*
9 *resident for placement, that the facility has commenced*
10 *operating.*

11 (2) The department may take appropriate remedial action as
12 provided for in this chapter.

13 (b) (1) Every licensed residential care facility shall be
14 periodically inspected and evaluated for quality of care by a
15 representative or representatives designated by the director.
16 Evaluations shall be conducted at least annually and as often as
17 necessary to ensure the quality of care being provided.

18 (2) During each licensing inspection the department shall
19 determine if the facility meets regulatory standards, including,
20 but not limited to, providing residents with the appropriate level
21 of care based on the facility's license, providing adequate
22 staffing and services, updated resident records and assessments,
23 and compliance with basic health and safety standards.

24 (3) If the department determines that a resident requires a
25 higher level of care than the facility is authorized to provide, the
26 department may initiate a professional level of care assessment
27 by an assessor approved by the department. An assessment shall
28 be conducted in consultation with the resident, the resident's
29 physician and surgeon, and the resident's case manager, and shall
30 reflect the desires of the resident, the resident's physician and
31 surgeon, and the resident's case manager. The assessment also
32 shall recognize that certain illnesses are episodic in nature and
33 that the resident's need for a higher level of care may be
34 temporary.

35 (4) The department shall notify the residential care facility in
36 writing of all deficiencies in its compliance with this chapter and
37 the rules and regulations adopted pursuant to this chapter, and
38 shall set a reasonable length of time for compliance by the
39 facility.

(5) Reports on the results of each inspection, evaluation, or consultation shall be kept on file in the department, and all inspection reports, consultation reports, lists of deficiencies, and plans of correction shall be open to public inspection in the county in which the facility is located.

(c) Any duly authorized officer, employee, or agent of the department may, upon presentation of proper identification, enter and inspect any place providing personal care, supervision, and services, at any time, with or without advance notice, to secure compliance with, or to prevent a violation of, this chapter.

(d) No licensee shall discriminate or retaliate in any manner against any person receiving the services of the facility of the licensee, or against any employee of the facility, on the basis, or for the reason, that a person or employee or any other person has initiated or participated in an inspection pursuant to Section 1568.071.

(e) Any person who, without lawful authorization from a duly authorized officer, employee, or agent of the department, informs an owner, operator, employee, agent, or resident of a residential care facility, of an impending or proposed inspection or evaluation of that facility by personnel of the department, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (\$1,000), by imprisonment in the county jail for a period not to exceed 180 days, or by both a fine and imprisonment.

~~SEC. 6:~~

~~SEC. 9.~~ Section 1568.09 of the Health and Safety Code is amended to read:

1568.09. It is the intent of the Legislature in enacting this section to require the ~~fingerprints~~ *electronic fingerprint images* of those individuals whose contact with residents of residential care facilities for persons with a chronic, life-threatening illness may pose a risk to the residents' health and safety.

~~Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It~~ It is the intent of the Legislature, in enacting this section, to require the ~~fingerprints~~

1 *electronic fingerprint images* of those individuals whose contact
2 with community care clients may pose a risk to the clients' health
3 and safety. An individual shall be required to obtain either a
4 criminal record clearance ~~from the Department of Justice~~ or a
5 criminal record exemption from the State Department of Social
6 Services before his or her initial presence in a residential care
7 facility for persons with chronic, life-threatening illness.

8 (a) (1) Before issuing a license to any person or persons to
9 operate or manage a residential care facility, the department shall
10 secure from an appropriate law enforcement agency a criminal
11 record to determine whether the applicant or any other person
12 specified in subdivision (b) has ever been convicted of a crime
13 other than a minor traffic violation or arrested for any crime
14 specified in Section 290 of the Penal Code, for violating Section
15 245 or 273.5, subdivision (b) of Section 273a or, prior to January
16 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for
17 any crime for which the department cannot grant an exemption if
18 the person was convicted and the person has not been exonerated.

19 (2) The criminal history information shall include the full
20 criminal record if any, of those persons, and subsequent arrest
21 information pursuant to Section 11105.2 of the Penal Code.

22 (3) The following shall apply to the criminal record
23 information:

24 (A) If the State Department of Social Services finds that the
25 applicant or any other person specified in subdivision (b) has
26 been convicted of a crime, other than a minor traffic violation,
27 the application shall be denied, unless the director grants an
28 exemption pursuant to subdivision (f).

29 (B) If the State Department of Social Services finds that the
30 applicant, or any other person specified in subdivision (b) is
31 awaiting trial for a crime other than a minor traffic violation, the
32 State Department of Social Services may cease processing the
33 application until the conclusion of the trial.

34 (C) If no criminal record information has been recorded, the
35 Department of Justice shall provide the applicant and the State
36 Department of Social Services with a statement of that fact.

37 (D) If the State Department of Social Services finds after
38 licensure that the licensee, or any other person specified in
39 paragraph (2) of subdivision (b), has been convicted of a crime
40 other than a minor traffic violation, the license may be revoked,

1 unless the director grants an exemption pursuant to subdivision
2 (f).

3 (E) An applicant and any other person specified in subdivision
4 ~~(b) shall submit to the Department of Justice a second set of~~
5 ~~fingerprints for the purpose of searching the records of the~~
6 ~~Federal Bureau of Investigation, in addition to the search (b)~~
7 *shall submit fingerprint images and related information to the*
8 *Department of Justice and the Federal Bureau of Investigation,*
9 *through the Department of Justice, for a state and federal level*
10 *criminal offender record information search, in addition to the*
11 *search required by this subdivision. If an applicant meets all*
12 *other conditions for licensure, except receipt of the Federal*
13 *Bureau of Investigation's criminal history information for the*
14 *applicant and persons listed in subdivision (b), the department*
15 *may issue a license if the applicant and each person described by*
16 *subdivision (b) has signed and submitted a statement that he or*
17 *she has never been convicted of a crime in the United States,*
18 *other than a traffic infraction as defined in paragraph (1) of*
19 *subdivision (a) of Section 42001 of the Vehicle Code. If, after*
20 *licensure, the department determines that the licensee or person*
21 *specified in subdivision (b) has a criminal record, the license may*
22 *be revoked pursuant to subdivision (a) of Section 1568.082. The*
23 *department may also suspend the license pending an*
24 *administrative hearing pursuant to subdivision (b) of*
25 *Section 1568.082.*

26 (b) In addition to the applicant, the provisions of this section
27 shall be applicable to criminal convictions of the following
28 persons:

29 (1) Adults responsible for administration or direct supervision
30 of staff of the facility.

31 (2) Any person, other than a resident, residing in the facility.

32 (3) Any person who provides resident assistance in dressing,
33 grooming, bathing, or personal hygiene. Any nurse assistant or
34 home health aide meeting the requirements of Section 1338.5 or
35 1736.6, respectively, who is not employed, retained, or
36 contracted by the licensee, and who has been certified or
37 recertified on or after July 1, 1998, shall be deemed to meet the
38 criminal record clearance requirements of this section. A certified
39 nurse assistant and certified home health aide who will be
40 providing client assistance and who falls under this exemption

1 shall provide one copy of his or her current certification, prior to
2 providing care, to the residential care facility for persons with
3 chronic, life-threatening illness. The facility shall maintain the
4 copy of the certification on file as long as care is being provided
5 by the certified nurse assistant or certified home health aide at the
6 facility. Nothing in this paragraph restricts the right of the
7 department to exclude a certified nurse assistant or certified
8 home health aide from a licensed residential care facility for
9 persons with chronic, life-threatening illness pursuant to Section
10 1568.092.

11 (4) (A) Any staff person, volunteer, or employee who has
12 contact with the residents.

13 (B) A volunteer shall be exempt from the requirements of this
14 subdivision if he or she is a relative, significant other, or close
15 friend of a client receiving care in the facility and the volunteer
16 does not provide direct care and supervision of residents. A
17 volunteer who provides direct care and supervision shall be
18 exempt if the volunteer is a resident's spouse, significant other,
19 close friend, or family member and provides direct care and
20 supervision to that resident only at the request of the resident.
21 The department may define in regulations persons similar to
22 those described in this subparagraph who may be exempt from
23 the requirements of this subdivision.

24 (5) If the applicant is a firm, partnership, association, or
25 corporation, the chief executive officer or other person serving in
26 that capacity.

27 (6) Additional officers of the governing body of the applicant,
28 or other persons with a financial interest in the applicant, as
29 determined necessary by the department by regulation. The
30 criteria used in the development of these regulations shall be
31 based on the person's capability to exercise substantial influence
32 over the operation of the facility.

33 (c) (1) (A) Subsequent to initial licensure, any person
34 specified in subdivision (b) and not exempted from fingerprinting
35 shall, as a condition to employment, residence, or presence in a
36 residential care facility, be fingerprinted and sign a declaration
37 under penalty of perjury regarding any prior criminal
38 convictions. The licensee shall submit these fingerprints to the
39 Department of Justice, along with a second set of fingerprints, for
40 the purpose of searching the records of the Federal Bureau of

1 ~~Investigation~~ fingerprint images and related information to the
2 Department of Justice and the Federal Bureau of Investigation,
3 through the Department of Justice, for a state and federal level
4 criminal offender record information search, or to comply with
5 paragraph (1) of subdivision (g), prior to the person's
6 employment, residence, or initial presence in the residential care
7 facility.

8 (B) ~~These fingerprints shall be on a card provided by the State~~
9 ~~Department of Social Services for the purpose of obtaining a~~
10 ~~permanent set of fingerprints and submitted to the Department of~~
11 ~~Justice by the licensee or sent by electronic transmission in a~~
12 ~~manner approved by the State Department of Social Services. A~~
13 ~~licensee's failure to submit fingerprints to the Department of~~
14 ~~fingerprint images and related information shall be~~
15 ~~electronically submitted to the Department of Justice in a manner~~
16 ~~approved by the State Department of Social Services and the~~
17 ~~Department of Justice, for the purpose of obtaining a permanent~~
18 ~~set of fingerprints. A licensee's failure to submit fingerprint~~
19 ~~images and related information to the Department of Justice, or~~
20 ~~to comply with paragraph (1) of subdivision (g), as required in~~
21 ~~this section, shall result in the citation of a deficiency and an~~
22 ~~immediate assessment of civil penalties in the amount of one~~
23 ~~hundred dollars (\$100) per violation, per day for a maximum of~~
24 ~~five days, unless the violation is a second or subsequent violation~~
25 ~~within a 12-month period in which case the civil penalties shall~~
26 ~~be in the amount of one hundred dollars (\$100) per violation for~~
27 ~~a maximum of 30 days, and shall be grounds for disciplining the~~
28 ~~licensee pursuant to Section 1568.082. The State Department of~~
29 ~~Social Services may assess civil penalties for continued~~
30 ~~violations as allowed in Section 1568.0822. The fingerprints~~
31 ~~shall then be submitted to the State Department of Social~~
32 ~~Services fingerprint images and related information shall then be~~
33 ~~submitted to the Department of Justice for processing. The~~
34 ~~licensee shall maintain and make available for inspection~~
35 ~~documentation of the individual's clearance or exemption.~~

36 (2) A violation of the regulations adopted pursuant to Section
37 1522.04 shall result in the citation of a deficiency and an
38 immediate assessment of civil penalties in the amount of one
39 hundred dollars (\$100) per violation per day for a maximum of
40 five days, unless the violation is a second or subsequent violation

1 within a 12-month period in which case the civil penalties shall
2 be in the amount of one hundred dollars (\$100) per violation for
3 a maximum of 30 days, and shall be grounds for disciplining the
4 licensee pursuant to Section 1568.082. The department may
5 assess civil penalties for continued violations as permitted by
6 Section 1568.0822.

7 (3) Within 14 calendar days of the receipt of the ~~fingerprints~~
8 *fingerprint images*, the Department of Justice shall notify the
9 State Department of Social Services of the criminal record
10 information, as provided for in this subdivision. If no criminal
11 record information has been recorded, the Department of Justice
12 shall provide the licensee and the State Department of Social
13 Services with a statement of that fact within 14 calendar days of
14 receipt of the fingerprints. If new fingerprints ~~fingerprints~~
15 *fingerprint images* are required for processing, the Department of
16 Justice shall, within 14 calendar days from the date of receipt of
17 the fingerprints, notify the licensee that the fingerprints were
18 illegible. ~~When live-scan technology is operational, as defined in~~
19 ~~Section 1522.04, the Department of Justice shall notify the~~
20 ~~department, as required by that section, and shall notify the~~
21 ~~illegible. The Department of Justice shall notify the department,~~
22 ~~as required by Section 1522.04, and shall notify the licensee by~~
23 mail within 14 days of electronic transmission of the fingerprints
24 to the Department of Justice, if the person has no criminal history
25 record.

26 (4) Except for persons specified in paragraph (2) of
27 subdivision (b), the licensee shall endeavor to ascertain the
28 previous employment history of persons required to be
29 fingerprinted under this subdivision. If it is determined by the
30 State Department of Social Services, on the basis of the
31 fingerprints submitted to the Department of Justice, that the
32 person has been convicted of a sex offense against a minor, an
33 offense specified in Section 243.4, 273a, 273d, 273g, or 368 of
34 the Penal Code, or a felony, the department shall notify the
35 licensee to act immediately to terminate the person's
36 employment, remove the person from the residential care facility,
37 or bar the person from entering the residential care facility. The
38 department may subsequently grant an exemption pursuant to
39 subdivision (f). If the conviction was for another crime, except a
40 minor traffic violation, the licensee shall, upon notification by the

1 department, act immediately to either (1) terminate the person's
2 employment, remove the person from the residential care facility,
3 or bar the person from entering the residential care facility; or (2)
4 seek an exemption pursuant to subdivision (f). The department
5 shall determine if the person shall be allowed to remain in the
6 facility until a decision on the exemption is rendered. A
7 licensee's failure to comply with the department's prohibition of
8 employment, contact with clients, or presence in the facility as
9 required by this paragraph shall result in a citation of deficiency
10 and an immediate assessment of civil penalties by the department
11 against the licensee, in the amount of one hundred dollars (\$100)
12 per violation, per day for a maximum of five days, unless the
13 violation is a second or subsequent violation within a 12-month
14 period in which case the civil penalties shall be in the amount of
15 one hundred dollars (\$100) per violation for a maximum of 30
16 days, and shall be grounds for disciplining the licensee pursuant
17 to Section 1568.082.

18 (5) The department may issue an exemption on its own motion
19 pursuant to subdivision (f) if the person's criminal history
20 indicates that the person is of good character based on the age,
21 seriousness, and frequency of the conviction or convictions. The
22 department, in consultation with interested parties, shall develop
23 regulations to establish the criteria to grant an exemption
24 pursuant to this paragraph.

25 (6) Concurrently with notifying the licensee pursuant to
26 paragraph (4), the department shall notify the affected individual
27 of his or her right to seek an exemption pursuant to subdivision
28 (f). The individual may seek an exemption only if the licensee
29 terminates the person's employment or removes the person from
30 the facility after receiving notice from the department pursuant to
31 paragraph (4).

32 (d) (1) For purposes of this section or any other provision of
33 this chapter, a conviction means a plea or verdict of guilty or a
34 conviction following a plea of nolo contendere. Any action that
35 the department is permitted to take following the establishment
36 of a conviction may be taken when the time for appeal has
37 elapsed, when the judgment of conviction has been affirmed on
38 appeal, or when an order granting probation is made suspending
39 the imposition of the sentence, notwithstanding a subsequent
40 order pursuant to Sections 1203.4 and 1203.4a of the Penal Code

1 permitting that person to withdraw his or her plea of guilty and to
2 enter a plea of not guilty, setting aside the verdict of guilty, or
3 dismissing the accusation, information, or indictment. For
4 purposes of this chapter, the record of a conviction, or a copy
5 thereof certified by the clerk of the court or by a judge of the
6 court in which the conviction occurred, shall be conclusive
7 evidence of the conviction. For purposes of this section or any
8 other provision of this chapter, the arrest disposition report
9 certified by the Department of Justice, or documents admissible
10 in a criminal action pursuant to Section 969b of the Penal Code,
11 shall be prima facie evidence of the conviction, notwithstanding
12 any other provision of law prohibiting the admission of these
13 documents in a civil or administrative action.

14 (2) For purposes of this section or any other provision of this
15 chapter, the department shall consider criminal convictions from
16 another state or federal court as if the criminal offense was
17 committed in this state.

18 (e) The State Department of Social Services may not use a
19 record of arrest to deny, revoke, or terminate any application,
20 license, employment, or residence unless the department
21 investigates the incident and secures evidence, whether or not
22 related to the incident of arrest, that is admissible in an
23 administrative hearing to establish conduct by the person that
24 may pose a risk to the health and safety of any person who is or
25 may become a client. The State Department of Social Services is
26 authorized to obtain any arrest or conviction records or reports
27 from any law enforcement agency as necessary to the
28 performance of its duties to inspect, license, and investigate
29 community care facilities and individuals associated with a
30 community care facility.

31 (f) (1) After review of the record, the director may grant an
32 exemption from disqualification for a license as specified in
33 paragraphs (1) and (4) of subdivision (a), or for employment,
34 residence, or presence in a residential care facility as specified in
35 paragraphs (4), (5), and (6) of subdivision (c) if the director has
36 substantial and convincing evidence to support a reasonable
37 belief that the applicant and the person convicted of the crime, if
38 other than the applicant, are of such good character as to justify
39 issuance of the license or special permit or granting an exemption
40 for purposes of subdivision (c). However, an exemption may not

1 be granted pursuant to this subdivision if the conviction was for
2 any of the following offenses:

3 (A) An offense specified in Section 220, 243.4, or 264.1,
4 subdivision (a) of Section 273a or, prior to January 1, 1994,
5 paragraph (1) of Section 273a, Section 273d, 288, or 289,
6 subdivision (a) of Section 290, or Section 368 of the Penal Code,
7 or was a conviction of another crime against an individual
8 specified in subdivision (c) of Section 667.5 of the Penal Code.

9 (B) A felony offense specified in Section 729 of the Business
10 and Professional Code or Section 206 or 215, subdivision (a) of
11 Section 347, subdivision (b) of Section 417, or subdivision (a) of
12 Section 451 of the Penal Code.

13 (2) The department may not prohibit a person from being
14 employed or having contact with clients in a facility on the basis
15 of a denied criminal record exemption request or arrest
16 information unless the department complies with the
17 requirements of Section 1568.092.

18 (g) (1) For purposes of compliance with this section, the
19 department may permit an individual to transfer a current
20 criminal record clearance, as defined in subdivision (a), from one
21 facility to another, as long as the criminal record clearance has
22 been processed through a state licensing district office, and is
23 being transferred to another facility licensed by a state licensing
24 district office. The request shall be in writing to the department,
25 and shall include a copy of the person's driver's license or valid
26 identification card issued by the Department of Motor Vehicles,
27 or a valid photo identification issued by another state or the
28 United States government if the person is not a California
29 resident. Upon request of the licensee, who shall enclose a
30 self-addressed stamped envelope for this purpose, the department
31 shall verify whether the individual has a clearance that can be
32 transferred.

33 (2) The State Department of Social Services shall hold
34 criminal record clearances in its active files for a minimum of
35 two years after an employee is no longer employed at a licensed
36 facility in order for the criminal record clearance to be
37 transferred.

38 (h) If a licensee or facility is required by law to deny
39 employment or to terminate employment of any employee based
40 on written notification from the state department that the

1 employee has a prior criminal conviction or is determined
2 unsuitable for employment under Section 1568.092, the licensee
3 or facility shall not incur civil liability or unemployment
4 insurance liability as a result of that denial or termination.

5 (i) (1) The Department of Justice shall charge a fee sufficient
6 to cover its cost in providing services to comply with the 14-day
7 requirement contained in subdivision (c) for provision to the
8 department of criminal record information.

9 (2) Paragraph (1) shall cease to be implemented when the
10 department adopts emergency regulations pursuant to Section
11 1522.04, and shall become inoperative when permanent
12 regulations are adopted under that section.

13 ~~(j) Amendments to the provisions of this section made in the~~
14 ~~1998 calendar year shall be implemented commencing 60 days~~
15 ~~after the effective date of the act amending this section in the~~
16 ~~1998 calendar year, except those provisions for the submission of~~
17 ~~fingerprints for searching the records of the Federal Bureau of~~
18 ~~Investigation, which shall be implemented commencing January~~
19 ~~1, 1999.~~

20 ~~SEC. 7.~~

21 *SEC. 10.* Section 1569.17 of the Health and Safety Code is
22 amended to read:

23 1569.17. The Legislature recognizes the need to generate
24 timely and accurate positive fingerprint identification of
25 applicants as a condition of issuing licenses, permits, or
26 certificates of approval for persons to operate or provide direct
27 care services in a residential care facility for the elderly. ~~The~~
28 ~~Legislature supports the use of the fingerprint live-scan~~
29 ~~technology, as identified in the long-range plan of the~~
30 ~~Department of Justice for fully automating the processing of~~
31 ~~fingerprints and other data by the year 1999. It is the intent of the~~
32 *It is the intent of the* Legislature in enacting this section to
33 require the fingerprints of those individuals whose contact with
34 clients of residential care facilities for the elderly may pose a risk
35 to the clients' health and safety. An individual shall be required
36 to obtain either a criminal record clearance ~~from the Department~~
37 ~~of Justice~~ or a criminal record exemption from the State
38 Department of Social Services before his or her initial presence
39 in a residential care facility for the elderly.

(a) (1) Before issuing a license to any person or persons to operate or manage a residential care facility for the elderly, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(E) An applicant and any other person specified in subdivision ~~(b) shall submit a second set of fingerprints to the Department of Justice, for the purpose of searching the records of the Federal Bureau of Investigation~~ (b) shall submit fingerprint images and

1 *related information to the Department of Justice and the Federal*
2 *Bureau of Investigation, through the Department of Justice, for a*
3 *state and federal level criminal offender record information*
4 *search, in addition to the search required by subdivision (a). If an*
5 *applicant meets all other conditions for licensure, except receipt*
6 *of the Federal Bureau of Investigation's criminal history*
7 *information for the applicant and persons listed in subdivision*
8 *(b), the department may issue a license if the applicant and each*
9 *person described by subdivision (b) has signed and submitted a*
10 *statement that he or she has never been convicted of a crime in*
11 *the United States, other than a traffic infraction as defined in*
12 *paragraph (1) of subdivision (a) of Section 42001 of the Vehicle*
13 *Code. If, after licensure, the department determines that the*
14 *licensee or person specified in subdivision (b) has a criminal*
15 *record, the license may be revoked pursuant to Section 1569.50.*
16 *The department may also suspend the license pending an*
17 *administrative hearing pursuant to Sections 1569.50 and 1569.51.*

18 (b) In addition to the applicant, the provisions of this section
19 shall apply to criminal convictions of the following persons:

20 (1) (A) Adults responsible for administration or direct
21 supervision of staff.

22 (B) Any person, other than a client, residing in the facility.
23 Residents of unlicensed independent senior housing facilities that
24 are located in contiguous buildings on the same property as a
25 residential care facility for the elderly shall be exempt from these
26 requirements.

27 (C) Any person who provides client assistance in dressing,
28 grooming, bathing, or personal hygiene. Any nurse assistant or
29 home health aide meeting the requirements of Section 1338.5 or
30 1736.6, respectively, who is not employed, retained, or
31 contracted by the licensee, and who has been certified or
32 recertified on or after July 1, 1998, shall be deemed to meet the
33 criminal record clearance requirements of this section. A certified
34 nurse assistant and certified home health aide who will be
35 providing client assistance and who falls under this exemption
36 shall provide one copy of his or her current certification, prior to
37 providing care, to the residential care facility for the elderly. The
38 facility shall maintain the copy of the certification on file as long
39 as the care is being provided by the certified nurse assistant or
40 certified home health aide at the facility. Nothing in this

1 paragraph restricts the right of the department to exclude a
2 certified nurse assistant or certified home health aide from a
3 licensed residential care facility for the elderly pursuant to
4 Section 1569.58.

5 (D) Any staff person, volunteer, or employee who has contact
6 with the clients.

7 (E) If the applicant is a firm, partnership, association, or
8 corporation, the chief executive officer or other person serving in
9 a similar capacity.

10 (F) Additional officers of the governing body of the applicant
11 or other persons with a financial interest in the applicant, as
12 determined necessary by the department by regulation. The
13 criteria used in the development of these regulations shall be
14 based on the person's capability to exercise substantial influence
15 over the operation of the facility.

16 (2) The following persons are exempt from requirements
17 applicable under paragraph (1):

18 (A) A spouse, relative, significant other, or close friend of a
19 client shall be exempt if this person is visiting the client or
20 provides direct care and supervision to that client only.

21 (B) A volunteer to whom all of the following apply:

22 (i) The volunteer is at the facility during normal waking hours.

23 (ii) The volunteer is directly supervised by the licensee or a
24 facility employee with a criminal record clearance or exemption.

25 (iii) The volunteer spends no more than 16 hours per week at
26 the facility.

27 (iv) The volunteer does not provide clients with assistance in
28 dressing, grooming, bathing, or personal hygiene.

29 (v) The volunteer is not left alone with clients in care.

30 (C) A third-party contractor retained by the facility if the
31 contractor is not left alone with clients in care.

32 (D) A third-party contractor or other business professional
33 retained by a client and at the facility at the request or by
34 permission of that client. These individuals may not be left alone
35 with other clients.

36 (E) Licensed or certified medical professionals are exempt
37 from fingerprint and criminal background check requirements
38 imposed by community care licensing. This exemption does not
39 apply to a person who is a community care facility licensee or an
40 employee of the facility.

1 (F) Employees of licensed home health agencies and members
2 of licensed hospice interdisciplinary teams who have contact
3 with a resident of a residential care facility at the request of the
4 resident or resident's legal decisionmaker are exempt from
5 fingerprint and criminal background check requirements imposed
6 by community care licensing. This exemption does not apply to a
7 person who is a community care facility licensee or an employee
8 of the facility.

9 (G) Clergy and other spiritual caregivers who are performing
10 services in common areas of the residential care facility, or who
11 are advising an individual resident at the request of, or with
12 permission of, the resident, are exempt from fingerprint and
13 criminal background check requirements imposed by community
14 care licensing. This exemption does not apply to a person who is
15 a community care facility licensee or an employee of the facility.

16 (H) Any person similar to those described in this subdivision,
17 as defined by the department in regulations.

18 (I) Nothing in this paragraph shall prevent a licensee from
19 requiring a criminal record clearance of any individual exempt
20 from the requirements of this section, provided that the
21 individual has client contact.

22 (c) (1) (A) Subsequent to initial licensure, any person
23 required to be fingerprinted pursuant to subdivision (b) shall, as a
24 condition to employment, residence, or presence in a residential
25 facility for the elderly, be fingerprinted and sign a declaration
26 under penalty of perjury regarding any prior criminal
27 convictions. The licensee shall submit these fingerprints, along
28 with a second set of fingerprints for the purpose of searching the
29 records of the Federal Bureau of Investigation, to the Department
30 of Justice fingerprint images and related information to the
31 Department of Justice and the Federal Bureau of Investigation,
32 through the Department of Justice, for a state and federal level
33 criminal offender record information search, or to comply with
34 paragraph (1) of subdivision (g) prior to the person's
35 employment, residence, or initial presence in the residential care
36 facility for the elderly.

37 (B) ~~These fingerprints shall be on a fingerprint card provided~~
38 ~~by the State Department of Social Services, or sent by electronic~~
39 ~~transmission in a manner approved by the State Department of~~
40 ~~Social Services and the Department of Justice and submitted to~~

1 ~~the Department of Justice by the licensee. A licensee's failure to~~
2 ~~submit fingerprints to the Department of Justice, or to comply~~
3 ~~fingerprints and related information shall be~~
4 ~~electronically transmitted in a manner approved by the State~~
5 ~~Department of Social Services and the Department of Justice. A~~
6 ~~licensee's failure to submit fingerprint images and related~~
7 ~~information to the Department of Justice, or to comply with~~
8 paragraph (1) of subdivision (g), as required in this section, shall
9 result in the citation of a deficiency and an immediate assessment
10 of civil penalties in the amount of one hundred dollars (\$100) per
11 violation, per day for a maximum of five days, unless the
12 violation is a second or subsequent violation within a 12-month
13 period in which case the civil penalties shall be in the amount of
14 one hundred dollars (\$100) per violation for a maximum of 30
15 days, and shall be grounds for disciplining the licensee pursuant
16 to Section 1569.50. The State Department of Social Services may
17 assess civil penalties for continued violations as permitted by
18 Section 1569.49. The licensee shall then submit these
19 fingerprints to the State Department of Social Services for
20 processing. Documentation of the individual's clearance or
21 exemption shall be maintained by the licensee and ~~be available~~
22 ~~for inspection. When live-scan technology is operational, as~~
23 ~~defined in Section 1522.04, the Department of Justice shall notify~~
24 ~~the department, as required by that section, be available for~~
25 ~~inspection. The Department of Justice shall notify the~~
26 ~~department, as required by Section 1522.04, and notify the~~
27 licensee by mail within 14 days of electronic transmission of the
28 fingerprints to the Department of Justice, if the person has no
29 criminal record. A violation of the regulations adopted pursuant
30 to Section 1522.04 shall result in the citation of a deficiency and
31 an immediate assessment of civil penalties in the amount of one
32 hundred dollars (\$100) per violation, per day for a maximum of
33 five days, unless the violation is a second or subsequent violation
34 within a 12-month period in which case the civil penalties shall
35 be in the amount of one hundred dollars (\$100) per violation for
36 a maximum of 30 days, and shall be grounds for disciplining the
37 licensee pursuant to Section 1569.50. The department may assess
38 civil penalties for continued violations as permitted by Section
39 1569.49.

1 (2) Within 14 calendar days of the receipt of the ~~fingerprints~~
2 *fingerprint images*, the Department of Justice shall notify the
3 State Department of Social Services of the criminal record
4 information, as provided for in this subdivision. If no criminal
5 record information has been recorded, the Department of Justice
6 shall provide the licensee and the State Department of Social
7 Services with a statement of that fact within 14 calendar days of
8 receipt of the ~~fingerprints~~ *fingerprint images*. If new ~~fingerprints~~
9 *fingerprint images* are required for processing, the Department of
10 Justice shall, within 14 calendar days from the date of receipt of
11 ~~the fingerprints, notify the licensee that the fingerprints were the~~
12 *fingerprint images, notify the licensee that the fingerprint images*
13 *were illegible.*

14 (3) Except for persons specified in paragraph (2) of
15 subdivision (b), the licensee shall endeavor to ascertain the
16 previous employment history of persons required to be
17 fingerprinted under this subdivision. If the State Department of
18 Social Services determines, on the basis of the ~~fingerprints~~
19 *fingerprint images* submitted to the Department of Justice, that
20 the person has been convicted of a sex offense against a minor,
21 an offense specified in Section 243.4, 273a, 273d, 273g, or 368
22 of the Penal Code, or a felony, the State Department of Social
23 Services shall notify the licensee in writing within 15 calendar
24 days of the receipt of the notification from the Department of
25 Justice to act immediately to terminate the person's employment,
26 remove the person from the residential care facility for the
27 elderly, or bar the person from entering the residential care
28 facility for the elderly. The State Department of Social Services
29 may subsequently grant an exemption pursuant to subdivision (f).
30 If the conviction was for another crime, except a minor traffic
31 violation, the licensee shall, upon notification by the State
32 Department of Social Services, act immediately to either (1)
33 terminate the person's employment, remove the person from the
34 residential care facility for the elderly, or bar the person from
35 entering the residential care facility for the elderly or (2) seek an
36 exemption pursuant to subdivision (f). The department shall
37 determine if the person shall be allowed to remain in the facility
38 until a decision on the exemption is rendered by the department.
39 A licensee's failure to comply with the department's prohibition
40 of employment, contact with clients, or presence in the facility as

1 required by this paragraph shall result in a citation of deficiency
2 and an immediate assessment of civil penalties by the department
3 against the licensee, in the amount of one hundred dollars (\$100)
4 per violation, per day for a maximum of five days, unless the
5 violation is a second or subsequent violation within a 12-month
6 period in which case the civil penalties shall be in the amount of
7 one hundred dollars (\$100) per violation for a maximum of 30
8 days, and shall be grounds for disciplining the licensee pursuant
9 to Section 1569.50.

10 (4) The department may issue an exemption on its own motion
11 pursuant to subdivision (f) if the person's criminal history
12 indicates that the person is of good character based on the age,
13 seriousness, and frequency of the conviction or convictions. The
14 department, in consultation with interested parties, shall develop
15 regulations to establish the criteria to grant an exemption
16 pursuant to this paragraph.

17 (5) Concurrently with notifying the licensee pursuant to
18 paragraph (4), the department shall notify the affected individual
19 of his or her right to seek an exemption pursuant to subdivision
20 (f). The individual may seek an exemption only if the licensee
21 terminates the person's employment or removes the person from
22 the facility after receiving notice from the department pursuant to
23 paragraph (4).

24 (d) (1) For purposes of this section or any other provision of
25 this chapter, a conviction means a plea or verdict of guilty or a
26 conviction following a plea of nolo contendere. Any action that
27 the department is permitted to take following the establishment
28 of a conviction may be taken when the time for appeal has
29 elapsed, when the judgment of conviction has been affirmed on
30 appeal or when an order granting probation is made suspending
31 the imposition of the sentence, notwithstanding a subsequent
32 order pursuant to the provisions of Sections 1203.4 and 1203.4a
33 of the Penal Code permitting a person to withdraw his or her plea
34 of guilty and to enter a plea of not guilty, or setting aside the
35 verdict of guilty, or dismissing the accusation, information, or
36 indictment. For purposes of this section or any other provision of
37 this chapter, the record of a conviction, or a copy thereof certified
38 by the clerk of the court or by a judge of the court in which the
39 conviction occurred, shall be conclusive evidence of the
40 conviction. For purposes of this section or any other provision of

1 this chapter, the arrest disposition report certified by the
2 Department of Justice or documents admissible in a criminal
3 action pursuant to Section 969b of the Penal Code shall be prima
4 facie evidence of the conviction, notwithstanding any other
5 provision of law prohibiting the admission of these documents in
6 a civil or administrative action.

7 (2) For purposes of this section or any other provision of this
8 chapter, the department shall consider criminal convictions from
9 another state or federal court as if the criminal offense was
10 committed in this state.

11 (e) The State Department of Social Services may not use a
12 record of arrest to deny, revoke, or terminate any application,
13 license, employment, or residence unless the department
14 investigates the incident and secures evidence, whether or not
15 related to the incident of arrest, that is admissible in an
16 administrative hearing to establish conduct by the person that
17 may pose a risk to the health and safety of any person who is or
18 may become a client. The State Department of Social Services is
19 authorized to obtain any arrest or conviction records or reports
20 from any law enforcement agency as necessary to the
21 performance of its duties to inspect, license, and investigate
22 community care facilities and individuals associated with a
23 community care facility.

24 (f) (1) After review of the record, the director may grant an
25 exemption from disqualification for a license as specified in
26 paragraphs (1) and (4) of subdivision (a), or for employment,
27 residence, or presence in a residential care facility for the elderly
28 as specified in paragraphs (4), (5), and (6) of subdivision (c) if
29 the director has substantial and convincing evidence to support a
30 reasonable belief that the applicant and the person convicted of
31 the crime, if other than the applicant, are of such good character
32 as to justify issuance of the license or special permit or granting
33 an exemption for purposes of subdivision (c). However, an
34 exemption may not be granted pursuant to this subdivision if the
35 conviction was for any of the following offenses:

36 (A) An offense specified in Section 220, 243.4, or 264.1,
37 subdivision (a) of Section 273a or, prior to January 1, 1994,
38 paragraph (1) of Section 273a, Section 273d, 288, or 289,
39 subdivision (a) of Section 290, or Section 368 of the Penal Code,

1 or was a conviction of another crime against an individual
2 specified in subdivision (c) of Section 667.5 of the Penal Code.

3 (B) A felony offense specified in Section 729 of the Business
4 and Professions Code or Section 206 or 215, subdivision (a) of
5 Section 347, subdivision (b) of Section 417, or subdivision (a) of
6 Section 451 of the Penal Code.

7 (2) The director shall notify in writing the licensee or the
8 applicant of his or her decision within 60 days of receipt of all
9 information from the applicant and other sources determined
10 necessary by the director for the rendering of a decision pursuant
11 to this subdivision.

12 (3) The department may not prohibit a person from being
13 employed or having contact with clients in a facility on the basis
14 of a denied criminal record exemption request or arrest
15 information unless the department complies with the
16 requirements of Section 1569.58.

17 (g) (1) For purposes of compliance with this section, the
18 department may permit an individual to transfer a current
19 criminal record clearance, as defined in subdivision (a), from one
20 facility to another, as long as the criminal record clearance has
21 been processed through a state licensing district office, and is
22 being transferred to another facility licensed by a state licensing
23 district office. The request shall be submitted in writing to the
24 department, and shall include a copy of the person's driver's
25 license or valid identification card issued by the Department of
26 Motor Vehicles, or a valid photo identification issued by another
27 state or the United States government if the person is not a
28 California resident. Upon request of the licensee, who shall
29 enclose a self-addressed stamped envelope for this purpose, the
30 department shall verify whether the individual has a clearance
31 that can be transferred.

32 (2) The State Department of Social Services shall hold
33 criminal record clearances in its active files for a minimum of
34 two years after an employee is no longer employed at a licensed
35 facility in order for the criminal record clearances to be
36 transferred under this section.

37 (h) If a licensee or facility is required by law to deny
38 employment or to terminate employment of any employee based
39 on written notification from the department that the employee has
40 a prior criminal conviction or is determined unsuitable for

1 employment under Section 1569.58, the licensee or facility shall
2 not incur civil liability or unemployment insurance liability as a
3 result of that denial or termination.

4 ~~(i) Amendments to the provisions of this section made in the~~
5 ~~1998 calendar year shall be implemented commencing 60 days~~
6 ~~after the effective date of the act amending this section in the~~
7 ~~1998 calendar year, except those provisions for the submission of~~
8 ~~fingerprints for searching the records of the Federal Bureau of~~
9 ~~Investigation, which shall be implemented commencing on~~
10 ~~January 1, 1999.~~

11 *SEC. 11. Section 1569.24 of the Health and Safety Code is*
12 *amended to read:*

13 1569.24. Within 90 days ~~of~~ *after a facility accepts its first*
14 *resident for placement following its initial licensure*, the
15 department shall inspect the facility to evaluate compliance with
16 rules and regulations and to assess the facility's continuing ability
17 to meet regulatory requirements. *The licensee shall notify the*
18 *department, within five business days after accepting its first*
19 *resident for placement, that the facility has commenced*
20 *operating.*

21 The department may take appropriate remedial action as
22 provided for in this chapter.

23 ~~SEC. 8.~~

24 *SEC. 12. Section 1575.7 of the Health and Safety Code is*
25 *amended to read:*

26 1575.7. (a) (1) The State Department of Health Services,
27 prior to issuing a new license, shall obtain a criminal *record*
28 clearance for the administrator, program director, and fiscal
29 officer of the proposed adult day health care center. The
30 department shall obtain the criminal ~~records~~ *record* clearances
31 each time these positions are to be filled. These criminal record
32 clearances, in accordance with subdivisions (b) and (c), shall be
33 completed prior to direct contact with residents.

34 (2) A criminal record clearance shall be complete when the
35 department has obtained the person's criminal record information
36 from the Department of Justice and has determined that the
37 person is not disqualified from engaging in the activity for which
38 clearance is required.

(3) The criminal record clearance shall require the administrator, program director, and fiscal officer to submit electronic fingerprint images to the department.

(b) A past conviction of any crime, especially any crime involving misuse of funds or involving physical abuse shall, in the discretion of the department, be grounds for denial of the license, and shall be grounds to prohibit the person from providing services in an adult day health care center.

(c) Suspension of the applicant from the Medi-Cal program or prior violations of statutory provisions or regulations relating to licensure of a health facility, community care facility, or clinic shall also be grounds for a denial of licensure, where determined by the state department to indicate a substantial probability that the applicant will not comply with this chapter and regulations adopted hereunder.

(d) No applicant which is licensed as a health facility, community care facility, or clinic may be issued a license for an adult day health care center while there exists a subsisting, uncorrected violation of the statutes or regulations relating to such licensure.

(e) The department shall develop procedures to ensure that any licensee, direct care staff, or certificate holder for whom a criminal record has been obtained pursuant to this section or Section 1265.5 or 1736 shall not be required to obtain multiple criminal record clearances.

~~SEC. 9.~~

SEC. 13. Section 1596.871 of the Health and Safety Code is amended to read:

1596.871. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a child care center or family child care home. ~~Therefore, the Legislature supports the use of the fingerprint live-scan technology, as defined in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the~~ *It is the intent of the* Legislature in enacting this section to require the

1 fingerprints of those individuals whose contact with child day
2 care facility clients may pose a risk to the children's health and
3 safety. An individual shall be required to obtain either a criminal
4 record clearance ~~from the Department of Justice~~ or a criminal
5 record exemption from the State Department of Social Services
6 before his or her initial presence in a child day care facility.

7 (a) (1) Before issuing a license or special permit to any person
8 to operate or manage a day care facility, the department shall
9 secure from an appropriate law enforcement agency a criminal
10 record to determine whether the applicant or any other person
11 specified in subdivision (b) has ever been convicted of a crime
12 other than a minor traffic violation or arrested for any crime
13 specified in Section 290 of the Penal Code, for violating Section
14 245 or 273.5, subdivision (b) of Section 273a or, prior to January
15 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for
16 any crime for which the department cannot grant an exemption if
17 the person was convicted and the person has not been exonerated.

18 (2) The criminal history information shall include the full
19 criminal record, if any, of those persons, and subsequent arrest
20 information pursuant to Section 11105.2 of the Penal Code.

21 (3) Except during the 2003–04, 2004–05, and 2005–06 fiscal
22 years, neither the Department of Justice nor the department may
23 charge a fee for the fingerprinting of an applicant who will serve
24 six or fewer children or any family day care applicant for a
25 license, or for obtaining a criminal record of an applicant
26 pursuant to this section.

27 (4) The following shall apply to the criminal record
28 information:

29 (A) If the State Department of Social Services finds that the
30 applicant or any other person specified in subdivision (b) has
31 been convicted of a crime, other than a minor traffic violation,
32 the application shall be denied, unless the director grants an
33 exemption pursuant to subdivision (f).

34 (B) If the State Department of Social Services finds that the
35 applicant, or any other person specified in subdivision (b), is
36 awaiting trial for a crime other than a minor traffic violation, the
37 State Department of Social Services may cease processing the
38 application until the conclusion of the trial.

1 (C) If no criminal record information has been recorded, the
2 Department of Justice shall provide the applicant and the State
3 Department of Social Services with a statement of that fact.

4 (D) If the State Department of Social Services finds after
5 licensure that the licensee, or any other person specified in
6 paragraph (2) of subdivision (b), has been convicted of a crime
7 other than a minor traffic violation, the license may be revoked,
8 unless the director grants an exemption pursuant to subdivision
9 (f).

10 (E) An applicant and any other person specified in subdivision
11 ~~(b) shall submit a second set of fingerprints to the Department of~~
12 ~~Justice, for the purpose of searching the records of the Federal~~
13 ~~Bureau of Investigation~~ *(b) shall submit fingerprint images and*
14 *related information to the Department of Justice and the Federal*
15 *Bureau of Investigation, through the Department of Justice, for a*
16 *state and federal level criminal offender record information*
17 *search, in addition to the search required by subdivision (a). If an*
18 *applicant meets all other conditions for licensure, except receipt*
19 *of the Federal Bureau of Investigation's criminal history*
20 *information for the applicant and persons listed in subdivision*
21 *(b), the department may issue a license if the applicant and each*
22 *person described by subdivision (b) has signed and submitted a*
23 *statement that he or she has never been convicted of a crime in*
24 *the United States, other than a traffic infraction as defined in*
25 *paragraph (1) of subdivision (a) of Section 42001 of the Vehicle*
26 *Code. If, after licensure, the department determines that the*
27 *licensee or person specified in subdivision (b) has a criminal*
28 *record, the license may be revoked pursuant to Section 1596.885.*
29 *The department may also suspend the license pending an*
30 *administrative hearing pursuant to Section 1596.886.*

31 (b) (1) In addition to the applicant, this section shall be
32 applicable to criminal convictions of the following persons:

33 (A) Adults responsible for administration or direct supervision
34 of staff.

35 (B) Any person, other than a child, residing in the facility.

36 (C) Any person who provides care and supervision to the
37 children.

38 (D) Any staff person, volunteer, or employee who has contact
39 with the children.

1 (i) A volunteer providing time-limited specialized services
2 shall be exempt from the requirements of this subdivision if this
3 person is directly supervised by the licensee or a facility
4 employee with a criminal record clearance or exemption, the
5 volunteer spends no more than 16 hours per week at the facility,
6 and the volunteer is not left alone with children in care.

7 (ii) A student enrolled or participating at an accredited
8 educational institution shall be exempt from the requirements of
9 this subdivision if the student is directly supervised by the
10 licensee or a facility employee with a criminal record clearance
11 or exemption, the facility has an agreement with the educational
12 institution concerning the placement of the student, the student
13 spends no more than 16 hours per week at the facility, and the
14 student is not left alone with children in care.

15 (iii) A volunteer who is a relative, legal guardian, or foster
16 parent of a client in the facility shall be exempt from the
17 requirements of this subdivision.

18 (iv) A contracted repair person retained by the facility, if not
19 left alone with children in care, shall be exempt from the
20 requirements of this subdivision.

21 (v) Any person similar to those described in this subdivision,
22 as defined by the department in regulations.

23 (E) If the applicant is a firm, partnership, association, or
24 corporation, the chief executive officer, other person serving in
25 like capacity, or a person designated by the chief executive
26 officer as responsible for the operation of the facility, as
27 designated by the applicant agency.

28 (F) If the applicant is a local educational agency, the president
29 of the governing board, the school district superintendent, or a
30 person designated to administer the operation of the facility, as
31 designated by the local educational agency.

32 (G) Additional officers of the governing body of the applicant,
33 or other persons with a financial interest in the applicant, as
34 determined necessary by the department by regulation. The
35 criteria used in the development of these regulations shall be
36 based on the person's capability to exercise substantial influence
37 over the operation of the facility.

38 (H) This section does not apply to employees of child care and
39 development programs under contract with the State Department
40 of Education who have completed a criminal-records *record*

1 clearance as part of an application to the Commission on Teacher
2 Credentialing, and who possess a current credential or permit
3 issued by the commission, including employees of child care and
4 development programs that serve both children subsidized under,
5 and children not subsidized under, a State Department of
6 Education contract. The Commission on Teacher Credentialing
7 shall notify the department upon revocation of a current
8 credential or permit issued to an employee of a child care and
9 development program under contract with the State Department
10 of Education.

11 (I) This section does not apply to employees of a child care
12 and development program operated by a school district, county
13 office of education, or community college district under contract
14 with the State Department of Education who have completed a
15 criminal record clearance as a condition of employment. The
16 school district, county office of education, or community college
17 district upon receiving information that the status of an
18 employee's criminal record clearance has changed shall submit
19 that information to the department.

20 (2) Nothing in this subdivision shall prevent a licensee from
21 requiring a criminal record clearance of any individuals exempt
22 from the requirements under this subdivision.

23 (c) (1) (A) Subsequent to initial licensure, any person
24 specified in subdivision (b) and not exempted from fingerprinting
25 shall, as a condition to employment, residence, or presence in a
26 child day care facility be fingerprinted and sign a declaration
27 under penalty of perjury regarding any prior criminal conviction.
28 ~~The licensee shall submit these fingerprints to the Department of~~
29 ~~Justice, along with a second set of fingerprints for the purpose of~~
30 ~~searching the records of the Federal Bureau of Investigation, or~~
31 *The licensee shall submit fingerprint images and related*
32 *information to the Department of Justice and the Federal Bureau*
33 *of Investigation, through the Department of Justice, for a state*
34 *and federal level criminal offender record information search, or*
35 to comply with paragraph (1) of subdivision (h), prior to the
36 person's employment, residence, or initial presence in the child
37 day care facility.

38 ~~(B) These fingerprints shall be on a card provided by the State~~
39 ~~Department of Social Services for the purpose of obtaining a~~
40 ~~permanent set of fingerprints and submitted to the Department of~~

1 ~~Justice by the licensee or sent by electronic transmission in a~~
2 ~~manner approved by the State Department of Social Services. A~~
3 ~~licensee's failure to submit fingerprints to the Department of~~
4 ~~fingerprint images for the purpose of obtaining a permanent set~~
5 ~~of fingerprints shall be electronically submitted to the~~
6 ~~Department of Justice in a manner approved by the State~~
7 ~~Department of Social Services and the Department of Justice. A~~
8 ~~licensee's failure to submit fingerprint images and related~~
9 ~~information to the Department of Justice, or to comply with~~
10 ~~paragraph (1) of subdivision (h), as required in this section, shall~~
11 ~~result in the citation of a deficiency, and an immediate~~
12 ~~assessment of civil penalties in the amount of one hundred~~
13 ~~dollars (\$100) per violation, per day for a maximum of five days,~~
14 ~~unless the violation is a second or subsequent violation within a~~
15 ~~12-month period in which case the civil penalties shall be in the~~
16 ~~amount of one hundred dollars (\$100) per violation for a~~
17 ~~maximum of 30 days, and shall be grounds for disciplining the~~
18 ~~licensee pursuant to Section 1596.885 or Section 1596.886. The~~
19 ~~State Department of Social Services may assess civil penalties~~
20 ~~for continued violations permitted by Sections 1596.99 and~~
21 ~~1597.62. The fingerprints shall then be submitted to the State~~
22 ~~Department of Social Services for processing. Within 14 calendar~~
23 ~~days of the receipt of the fingerprints, the 1596.99 and 1597.62.~~
24 ~~The fingerprint images and related information shall then be~~
25 ~~submitted to the department for processing. Within 14 calendar~~
26 ~~days of the receipt of the fingerprint images, the Department of~~
27 ~~Justice shall notify the State Department of Social Services of the~~
28 ~~criminal record information, as provided in this subdivision. If no~~
29 ~~criminal record information has been recorded, the Department~~
30 ~~of Justice shall provide the licensee and the State Department of~~
31 ~~Social Services with a statement of that fact within 14 calendar~~
32 ~~days of receipt of the fingerprints fingerprint images. If new~~
33 ~~fingerprints fingerprint images are required for processing, the~~
34 ~~Department of Justice shall, within 14 calendar days from the~~
35 ~~date of receipt of the fingerprints fingerprint images, notify the~~
36 ~~licensee that the fingerprints were illegible.~~

37 (C) Documentation of the individual's clearance or exemption
38 shall be maintained by the licensee, and shall be available for
39 inspection. When live-scan technology is operational, as defined
40 in Section 1522.04, the Department of Justice shall notify the

1 department, as required by that section, and notify the licensee by
2 mail within 14 days of electronic transmission of the fingerprints
3 to the Department of Justice, if the person has no criminal record.
4 Any violation of the regulations adopted pursuant to Section
5 1522.04 shall result in the citation of a deficiency and an
6 immediate assessment of civil penalties in the amount of one
7 hundred dollars (\$100) per violation, per day for a maximum of
8 five days, unless the violation is a second or subsequent violation
9 within a 12-month period in which case the civil penalties shall
10 be in the amount of one hundred dollars (\$100) per violation for
11 a maximum of 30 days, and shall be grounds for disciplining the
12 licensee pursuant to Section 1596.885 or Section 1596.886. The
13 department may assess civil penalties for continued violations, as
14 permitted by Sections 1596.99 and 1597.62.

15 (2) Except for persons specified in paragraph (2) of
16 subdivision (b), the licensee shall endeavor to ascertain the
17 previous employment history of persons required to be
18 fingerprinted under this subdivision. If it is determined by the
19 department, on the basis of fingerprints submitted to the
20 Department of Justice, that the person has been convicted of a
21 sex offense against a minor, an offense specified in Section
22 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony,
23 the State Department of Social Services shall notify the licensee
24 to act immediately to terminate the person's employment,
25 remove the person from the child day care facility, or bar the
26 person from entering the child day care facility. The department
27 may subsequently grant an exemption pursuant to subdivision (f).
28 If the conviction was for another crime except a minor traffic
29 violation, the licensee shall, upon notification by the State
30 Department of Social Services, act immediately to either (1)
31 terminate the person's employment, remove the person from the
32 child day care facility, or bar the person from entering the child
33 day care facility; or (2) seek an exemption pursuant to
34 subdivision (f). The department shall determine if the person
35 shall be allowed to remain in the facility until a decision on the
36 exemption is rendered. A licensee's failure to comply with the
37 department's prohibition of employment, contact with clients, or
38 presence in the facility as required by this paragraph shall result
39 in a citation of deficiency and an immediate assessment of civil
40 penalties by the department against the licensee, in the amount of

1 one hundred dollars (\$100) per violation, per day for a maximum
2 of five days, unless the violation is a second or subsequent
3 violation within a 12-month period in which case the civil
4 penalties shall be in the amount of one hundred dollars (\$100)
5 per violation for a maximum of 30 days, and shall be grounds for
6 disciplining the licensee pursuant to Section 1596.885 or
7 1596.886.

8 (3) The department may issue an exemption on its own motion
9 pursuant to subdivision (f) if the person's criminal history
10 indicates that the person is of good character based on the age,
11 seriousness, and frequency of the conviction or convictions. The
12 department, in consultation with interested parties, shall develop
13 regulations to establish the criteria to grant an exemption
14 pursuant to this paragraph.

15 (4) Concurrently with notifying the licensee pursuant to
16 paragraph (3), the department shall notify the affected individual
17 of his or her right to seek an exemption pursuant to subdivision
18 (f). The individual may seek an exemption only if the licensee
19 terminates the person's employment or removes the person from
20 the facility after receiving notice from the department pursuant to
21 paragraph (3).

22 (d) (1) For purposes of this section or any other provision of
23 this chapter, a conviction means a plea or verdict of guilty or a
24 conviction following a plea of nolo contendere. Any action that
25 the department is permitted to take following the establishment
26 of a conviction may be taken when the time for appeal has
27 elapsed, when the judgment of conviction has been affirmed on
28 appeal, or when an order granting probation is made suspending
29 the imposition of sentence, notwithstanding a subsequent order
30 pursuant to Sections 1203.4 and 1203.4a of the Penal Code
31 permitting the person to withdraw his or her plea of guilty and to
32 enter a plea of not guilty, or setting aside the verdict of guilty, or
33 dismissing the accusation, information, or indictment. For
34 purposes of this section or any other provision of this chapter, the
35 record of a conviction, or a copy thereof certified by the clerk of
36 the court or by a judge of the court in which the conviction
37 occurred, shall be conclusive evidence of the conviction. For
38 purposes of this section or any other provision of this chapter, the
39 arrest disposition report certified by the Department of Justice, or
40 documents admissible in a criminal action pursuant to Section

1 969b of the Penal Code, shall be prima facie evidence of
2 conviction, notwithstanding any other provision of law
3 prohibiting the admission of these documents in a civil or
4 administrative action.

5 (2) For purposes of this section or any other provision of this
6 chapter, the department shall consider criminal convictions from
7 another state or federal court as if the criminal offense was
8 committed in this state.

9 (e) The State Department of Social Services may not use a
10 record of arrest to deny, revoke, or terminate any application,
11 license, employment, or residence unless the department
12 investigates the incident and secures evidence, whether or not
13 related to the incident of arrest, that is admissible in an
14 administrative hearing to establish conduct by the person that
15 may pose a risk to the health and safety of any person who is or
16 may become a client. The State Department of Social Services is
17 authorized to obtain any arrest or conviction records or reports
18 from any law enforcement agency as necessary to the
19 performance of its duties to inspect, license, and investigate
20 community care facilities and individuals associated with a
21 community care facility.

22 (f) (1) After review of the record, the director may grant an
23 exemption from disqualification for a license or special permit as
24 specified in paragraphs (1) and (4) of subdivision (a), or for
25 employment, residence, or presence in a child day care facility as
26 specified in paragraphs (3), (4), and (5) of subdivision (c) if the
27 director has substantial and convincing evidence to support a
28 reasonable belief that the applicant and the person convicted of
29 the crime, if other than the applicant, are of good character so as
30 to justify issuance of the license or special permit or granting an
31 exemption for purposes of subdivision (c). However, an
32 exemption may not be granted pursuant to this subdivision if the
33 conviction was for any of the following offenses:

34 (A) An offense specified in Section 220, 243.4, or 264.1,
35 subdivision (a) of Section 273a or, prior to January 1, 1994,
36 paragraph (1) of Section 273a, Section 273d, 288, or 289,
37 subdivision (a) of Section 290, or Section 368 of the Penal Code,
38 or was a conviction of another crime against an individual
39 specified in subdivision (c) of Section 667.5 of the Penal Code.

1 (B) A felony offense specified in Section 729 of the Business
2 and Professions Code or Section 206 or 215, subdivision (a) of
3 Section 347, subdivision (b) of Section 417, or subdivision (a) or
4 (b) of Section 451 of the Penal Code.

5 (2) The department may not prohibit a person from being
6 employed or having contact with clients in a facility on the basis
7 of a denied criminal record exemption request or arrest
8 information unless the department complies with the
9 requirements of Section 1596.8897.

10 (g) Upon request of the licensee, who shall enclose a
11 self-addressed stamped postcard for this purpose, the Department
12 of Justice shall verify receipt of the ~~fingerprints~~ *fingerprint*
13 *images*.

14 (h) (1) For the purposes of compliance with this section, the
15 department may permit an individual to transfer a current
16 criminal record clearance, as defined in subdivision (a), from one
17 facility to another, as long as the criminal record clearance has
18 been processed through a state licensing district office, and is
19 being transferred to another facility licensed by a state licensing
20 district office. The request shall be in writing to the department,
21 and shall include a copy of the person's driver's license or valid
22 identification card issued by the Department of Motor Vehicles,
23 or a valid photo identification issued by another state or the
24 United States government if the person is not a California
25 resident. Upon request of the licensee, who shall enclose a
26 self-addressed stamped envelope for this purpose, the department
27 shall verify whether the individual has a clearance that can be
28 transferred.

29 (2) The State Department of Social Services shall hold
30 criminal record clearances in its active files for a minimum of
31 two years after an employee is no longer employed at a licensed
32 facility in order for the criminal record clearances to be
33 transferred.

34 (3) The following shall apply to a criminal record clearance or
35 exemption from the department or a county office with
36 department delegated licensing authority:

37 (A) A county office with department delegated licensing
38 authority may accept a clearance or exemption from the
39 department.

1 (B) The department may accept a clearance or exemption from
2 any county office with department delegated licensing authority.

3 (C) A county office with department delegated licensing
4 authority may accept a clearance or exemption from any other
5 county office with department delegated licensing authority.

6 (4) With respect to notifications issued by the Department of
7 Justice pursuant to Section 11105.2 of the Penal Code concerning
8 an individual whose criminal record clearance was originally
9 processed by the department or a county office with department
10 delegated licensing authority, all of the following shall apply:

11 (A) The Department of Justice shall process a request from the
12 department or a county office with department delegated
13 licensing authority to receive the notice, only if all of the
14 following conditions are met:

15 (i) The request shall be submitted to the Department of Justice
16 by the agency to be substituted to receive the notification.

17 (ii) The request shall be for the same applicant type as the type
18 for which the original clearance was obtained.

19 (iii) The request shall contain all prescribed data elements and
20 format protocols pursuant to a written agreement between the
21 department and the Department of Justice.

22 (B) (i) On or before January 7, 2005, the department shall
23 notify the Department of Justice of all county offices that have
24 department delegated licensing authority.

25 (ii) The department shall notify the Department of Justice
26 within 15 calendar days of the date on which a new county office
27 receives department delegated licensing authority or a county's
28 delegated licensing authority is rescinded.

29 (C) The Department of Justice shall charge the department or
30 a county office with department delegated licensing authority a
31 fee for each time a request to substitute the recipient agency is
32 received for purposes of this paragraph. This fee shall not exceed
33 the cost of providing the service.

34 ~~(i) Amendments to this section made in the 1998 calendar year~~
35 ~~shall be implemented commencing 60 days after the effective~~
36 ~~date of the act amending this section in the 1998 calendar year,~~
37 ~~except those provisions for the submission of fingerprints for~~
38 ~~searching the records of the Federal Bureau of Investigation,~~
39 ~~which shall be implemented commencing January 1, 1999.~~

1 ~~SEC. 10.~~

2 *SEC. 14.* Section 1728.1 of the Health and Safety Code is
3 amended to read:

4 1728.1. (a) To qualify for a home health agency license, the
5 following requirements shall be met:

6 (1) Every applicant shall satisfy the following conditions:

7 (A) Be of good moral character. If the applicant is a firm,
8 association, organization, partnership, business trust, corporation,
9 or company, all principal managing members thereof, and the
10 person in charge of the agency for which application for license
11 is made, shall satisfy this requirement. If the applicant is a
12 political subdivision of the state or other governmental agency,
13 the person in charge of the agency for which application for
14 license is made, shall satisfy this requirement.

15 (B) Possess and demonstrate the ability to comply with this
16 chapter and the rules and regulations adopted under this chapter
17 by the state department.

18 (C) File his or her application pursuant to and in full
19 compliance with this chapter.

20 (2) (A) The following persons shall submit to the State
21 Department of Health Services an application and shall submit
22 electronic fingerprint images to the Department of Justice for the
23 furnishing of the person's criminal record to the state department,
24 at the person's expense as provided in subdivision (b), for the
25 purpose of a criminal record review:

26 (i) The owner or owners of a private agency if the owners are
27 individuals.

28 (ii) If the owner of a private agency is a corporation,
29 partnership, or association, any person having a 10 percent or
30 greater interest in that corporation, partnership, or association.

31 (iii) The administrator of a home health agency.

32 (B) A criminal record clearance shall be complete when the
33 department has obtained the person's criminal-record information
34 *offender record information search response* from the
35 Department of Justice and has determined that the person is not
36 disqualified from engaging in the activity for which clearance is
37 required. If any of these persons provide services to patients, the
38 criminal record clearance shall be completed prior to patient
39 contact.

(b) The persons specified in paragraph (2) of subdivision (a) shall be responsible for any costs associated with transmitting the electronic fingerprint images. The fee to cover the processing costs of the Department of Justice, not including the costs associated with ~~rolling the fingerprint cards capturing or transmitting the fingerprint images and related information~~, shall not exceed thirty-two dollars (\$32) ~~per card submission~~.

(c) If the criminal record review conducted pursuant to paragraph (2) of subdivision (a) discloses a conviction for a felony or any crime that evidences an unfitness to provide home health services, the application for a license shall be denied or the person shall be prohibited from providing service in the home health agency applying for a license. This subdivision shall not apply to deny a license or prohibit the provision of service if the person presents evidence satisfactory to the state department that the person has been rehabilitated and presently is of such good character as to justify the issuance of the license or the provision of service in the home health agency.

~~SEC. 11.~~

SEC. 15. Section 1736.6 of the Health and Safety Code is amended to read:

1736.6. (a) A criminal record clearance shall be conducted ~~for all home health aides by the electronic submission of fingerprint cards to the department for processing at the~~ *by the department for all home health aides by electronically submitting fingerprint images and related information to the* Department of Justice. This criminal record clearance shall be completed prior to issuing or renewing a certificate, and prior to direct contact with residents. A criminal record shall be completed when the department has obtained the person's criminal record information from the Department of Justice and has determined that the person is not disqualified from engaging in the activity for which clearance is required. Applicants shall be responsible for any costs associated with ~~transmitting the fingerprint images. The fee to cover the processing costs of the Department of Justice, not including the costs associated with transmitting the fingerprint images, shall not exceed thirty-two~~ *capturing or transmitting the fingerprint images and related information. The fee to cover the processing costs of the Department of Justice, not including the costs associated with capturing or transmitting the fingerprint*

1 *images and related information, shall not exceed thirty-two*
2 *dollars (\$32) per submission.*

3 (b) Upon enrollment in a training program for home health
4 aide certification, and prior to direct contact with residents, a
5 candidate for training shall submit a training and examination
6 application to the department and submit electronic fingerprint
7 ~~images to receive a criminal record review through the~~
8 ~~Department of Justice. This criminal record clearance shall be~~
9 ~~completed prior to direct contact with residents. Submission of~~
10 ~~the fingerprints to the Federal Bureau of Investigation shall be at~~
11 ~~images and related information to receive a criminal record~~
12 ~~review through the Department of Justice. This criminal record~~
13 ~~clearance shall be completed prior to direct contact with~~
14 ~~residents. Submission of the fingerprint images to the Federal~~
15 ~~Bureau of Investigation, through the Department of Justice, shall~~
16 ~~be at the discretion of the state department.~~

17 (c) New home health aide applicants who are unemployed and
18 unable to pay the fee charged by the Department of Justice
19 pursuant to paragraph (1) of subdivision (a) due to financial
20 hardship may request a waiver for a period not to exceed six
21 months. The request for waiver shall be made in writing at the
22 time the fingerprint ~~card~~ *is images and related information are*
23 submitted for processing. The applicant shall agree to pay the fee
24 within six months of employment. The failure to pay the fee
25 within the six-month period shall result in the inactivation of the
26 applicant's certificate until the fee is paid in full.

27 (d) Upon receipt of the fingerprints, the Department of Justice
28 shall notify the state department of the criminal record
29 information, as provided for in this subdivision. If no criminal
30 record information has been recorded, the Department of Justice
31 shall provide the state department with a statement of that fact. If
32 ~~the fingerprints~~ *fingerprint images* are illegible, the Department
33 of Justice shall, within 15 calendar days from receipt of the
34 ~~fingerprints~~ *fingerprint images*, notify the state department of
35 that fact.

36 (e) The department shall respond to the applicant and
37 employer within 30 days from the date of receipt of the
38 fingerprint ~~cards~~ *images and related information.*

39 (f) A criminal record clearance, consistent with this section
40 shall be implemented for home health aide applicants beginning

1 July 1, 1998, and phased in for all certified home health aides by
2 June 30, 2000.

3 (g) The department shall develop procedures to ensure that
4 any licensee, direct care staff, or certificate holder for whom a
5 criminal record has been obtained pursuant to this section or
6 Section 1265.6 or 1338.5 shall not be required to obtain multiple
7 criminal record clearances.

8 ~~SEC. 12.~~

9 *SEC. 16.* Section 1743.9 of the Health and Safety Code is
10 amended to read:

11 1743.9. (a) To qualify for a private duty nursing agency
12 license, the following requirements shall be met:

13 (1) Every applicant shall satisfy the following conditions:

14 (A) Be of good moral character. If the applicant is a firm,
15 association, organization, partnership, business trust, corporation,
16 or company, all principal managing members thereof, and the
17 person in charge of the agency for which application for a license
18 is made, shall satisfy this requirement. If the applicant is a
19 political subdivision of the state or other governmental agency,
20 the person in charge of the agency for which application for a
21 license is made shall satisfy this requirement.

22 (B) Possess and demonstrate the ability to comply with this
23 chapter and the rules and regulations adopted under this chapter
24 by the department.

25 (C) File his or her application pursuant to and in full
26 compliance with this chapter.

27 (2) (A) The following persons shall submit to the department
28 an application, and shall submit fingerprint images *and related*
29 *information* to the Department of Justice, for the furnishing of the
30 person's criminal record to the department, at the person's
31 expense as provided in subdivision (b), for the purpose of a
32 criminal record review:

33 (i) The owner or owners of a private agency if the owners are
34 individuals.

35 (ii) If the owner of a private agency is a corporation,
36 partnership, or association, any person having a 10 percent or
37 greater interest in that corporation, partnership, or association.

38 (iii) The administrator of a private duty nursing agency.

39 (3) A criminal record clearance shall be complete when the
40 department has obtained from the Department of Justice the

1 person's criminal record and has determined that the person is
2 not disqualified from engaging in the activity for which clearance
3 is required.

4 (b) The persons specified in paragraph (2) of subdivision (a)
5 shall be responsible for any costs associated with transmitting the
6 fingerprint images. ~~The fee to cover the processing costs of the~~
7 ~~Department of Justice, not including the costs associated with~~
8 ~~transmitting the electronic fingerprint images, shall not exceed~~
9 *capturing or transmitting the fingerprint images and related*
10 *information. The fee to cover the processing costs of the*
11 *Department of Justice, not including the costs associated with*
12 *capturing or transmitting the electronic fingerprint images and*
13 *related information, shall not exceed thirty-two dollars (\$32) per*
14 *submission.*

15 (c) If the criminal record review conducted pursuant to
16 paragraph (2) of subdivision (a) discloses a conviction for a
17 felony or any crime that evidences an unfitness to provide private
18 duty nursing services, the application for a license shall be
19 denied, or the person shall be prohibited from providing service
20 in the private duty nursing agency applying for a license. This
21 subdivision shall not apply to deny a license or prohibit the
22 provision of service if the person presents evidence satisfactory
23 to the department that the person has been rehabilitated and
24 presently is of that good character that justifies the issuance of
25 the license or the provision of service in the private duty nursing
26 agency.

27 ~~SEC. 13.~~

28 *SEC. 17.* Section 1797.191 of the Health and Safety Code is
29 amended to read:

30 1797.191. (a) The authority shall establish minimum
31 standards for the training in pediatric first aid, pediatric
32 cardiopulmonary resuscitation (CPR), and preventive health
33 practices required by Section 1596.866.

34 (b) (1) The authority shall establish a process for the ongoing
35 review and approval of training programs in pediatric first aid,
36 pediatric CPR, and preventive health practices as specified in
37 paragraph (2) of subdivision (a) of Section 1596.866 to ensure
38 that those programs meet the minimum standards established
39 pursuant to subdivision (a). The authority shall charge fees equal
40 to its costs incurred for the pediatric first aid and pediatric CPR

1 training standards program and for the ongoing review and
2 approval of these programs. The initial approval of training
3 programs in pediatric first aid, pediatric CPR, and preventative
4 health practices shall be placed on probation for the first six
5 months of the initial two-year approval cycle, during which time
6 the training program shall not possess a vested right or property
7 interest in the training program approval. Upon receipt of
8 credible evidence of a violation of subdivision (f), the authority
9 may rescind the probationary approval by providing written
10 notice to the program director of the training program at his or
11 her last known address on file with the authority. A training
12 program whose probationary approval has been rescinded shall
13 have all the due process rights associated with the denial of an
14 initial training program approval.

15 (2) The authority shall establish, in consultation with experts
16 in pediatric first aid, pediatric CPR, and preventive health
17 practices, a process to ensure the quality of the training
18 programs, including, but not limited to, a method for assessing
19 the appropriateness of the courses and the qualifications of the
20 instructors.

21 (c) (1) The authority may charge a fee equal to its costs
22 incurred for the preventive health practices program and for the
23 initial review and approval and renewal of approval of the
24 program.

25 (2) If the authority chooses to establish a fee process based on
26 the use of course completion cards for the preventive health
27 practices program, the cost shall not exceed seven dollars (\$7)
28 per card for each training participant until January 1, 2001, at
29 which time the authority may evaluate its administrative costs.
30 After evaluation of the costs, the authority may establish a new
31 fee scale for the cards so that revenue does not exceed the costs
32 of the ongoing review and approval of the preventive health
33 practices training.

34 (d) For the purposes of this section, “training programs”
35 means programs that apply for approval by the authority to
36 provide the training in pediatric first aid, pediatric CPR, or
37 preventive health practices as specified in paragraph (2) of
38 subdivision (a) of Section 1596.866. Training programs include
39 all affiliated programs that also provide any of the
40 authority-approved training required by this division. “Affiliated

1 programs” means programs that are overseen by persons or
2 organizations that have an authority-approved training program
3 in pediatric first aid, pediatric CPR, or preventive health
4 practices. Affiliated programs also include programs that have
5 purchased an authority-approved training program in pediatric
6 first aid, pediatric CPR, or preventive health practices. Training
7 programs and their affiliated programs shall comply with this
8 division and with the regulations adopted by the authority
9 pertaining to training programs in pediatric first aid, pediatric
10 CPR, or preventive health practices.

11 (e) The director of the authority may, in accordance with
12 regulations adopted by the authority, deny, suspend, or revoke
13 any approval issued under this division or may place any
14 approved program on probation, upon the finding by the director
15 of the authority of an imminent threat to the public health and
16 safety as evidenced by the occurrence of any of the actions listed
17 in subdivision (f).

18 (f) Any of the following actions shall be considered evidence
19 of a threat to the public health and safety, and may result in the
20 denial, suspension, probation, or revocation of a program’s
21 approval or application for approval pursuant to this division.

22 (1) Fraud.

23 (2) Incompetence.

24 (3) The commission of any fraudulent, dishonest, or corrupt
25 act that is substantially related to the qualifications, functions,
26 and duties of training program directors and instructors.

27 (4) Conviction of any crime that is substantially related to the
28 qualifications, functions, and duties of training program directors
29 and instructors. The record of conviction or a certified copy of
30 the record shall be conclusive evidence of the conviction.

31 (5) Violating or attempting to violate, directly or indirectly, or
32 assisting in or abetting the violation of, or conspiring to violate,
33 this division or the regulations promulgated by the authority
34 pertaining to the review and approval of training programs in
35 pediatric first aid, pediatric CPR, and preventive health practices
36 as specified in paragraph (2) of subdivision (a) of Section
37 1596.866.

38 (g) In order to ensure that adequate qualified training
39 programs are available to provide training in the preventive
40 health practices course to all persons who are required to have

1 that training, the authority may, after approval of the
2 Commission on Emergency Medical Services pursuant to Section
3 1799.50, establish temporary standards for training programs for
4 use until permanent standards are adopted pursuant to Chapter
5 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
6 Title 2 of the Government Code.

7 (h) Persons who, prior to the date on which the amendments to
8 this section enacted in 1998 become operative, have completed a
9 course or courses in preventive health practices as specified in
10 subparagraph (C) of paragraph (2) of subdivision (a) of Section
11 1596.866, and have a certificate of completion card for a course
12 or courses in preventive health practices, or certified copies of
13 transcripts that identify the number of hours and the specific
14 course or courses taken for training in preventive health practices
15 shall be deemed to have met the requirement for training in
16 preventive health practices.

17 *SEC. 18. Section 1798.212 is added to the Health and Safety*
18 *Code, to read:*

19 *1798.212. (a) Each applicant for an initial EMT-P license or*
20 *for renewal of an EMT-P license shall disclose, on forms adopted*
21 *by the authority, the following information:*

22 *(1) The conviction of any crime under any state, federal, or*
23 *military jurisdiction, or any other jurisdiction outside of the*
24 *United States. All convictions shall be reported, including*
25 *convictions that have been expunged, convictions for which a*
26 *certificate of rehabilitation has been issued, and convictions for*
27 *which there has been a plea of nolo contendere.*

28 *(2) Any pending criminal charges or a current criminal*
29 *investigation.*

30 *(3) Any denial, revocation, suspension, or placement on*
31 *probation of a professional healing arts license, certification,*
32 *accreditation, or similar entitlement.*

33 *(4) Any pending investigation for patient care related issues.*

34 *(b) Any disclosure required by subdivision (a) shall include a*
35 *detailed written statement describing the crime or patient care*
36 *issue and the disposition. The applicant shall provide any police*
37 *reports, court records, or other documents under the applicant's*
38 *possession or control.*

39 *SEC. 19. Section 106700 of the Health and Safety Code is*
40 *amended to read:*

1 106700. (a) A nonreturnable fee, shall be paid by a person
2 for each application for registration, application for examination,
3 and biennial renewal.

4 (b) Fees shall not exceed the actual administrative costs of the
5 program. Fees, except retired and penalty fees, shall be subject to
6 Section 100425. The actual dollar figure charged shall be
7 rounded to the nearest whole dollar amount. The biennial
8 renewal fee-retired shall be twenty-five dollars (\$25).

9 (c) The nonreturnable biennial renewal fee, shall be paid by
10 each registered environmental health specialist on or before the
11 first day of January of every second year, or on any other date
12 that is determined by the department. Each registered
13 environmental health specialist registered pursuant to this article,
14 shall first pay the biennial fee at the time of initial registration to
15 cover the calendar year in which registration is acquired and the
16 following calendar year. Registrations not maintained as required
17 by this subdivision are suspended and remain invalid during the
18 period of suspension. Suspended registrations become revoked
19 three years after the date of suspension. Notwithstanding the
20 provisions of the Government Code, the executive officer shall
21 revoke suspended registrations after three years from the date of
22 suspension for nonpayment of fees.

23 (d) An additional penalty fee equal to 50 percent of the
24 biennial renewal fee for each year of delinquency or portion
25 thereof shall be paid by each person who fails to pay the fee
26 required by subdivision (c) within 30 days of the established due
27 date. All accumulated penalty fees shall be paid prior to any
28 revalidation of registration.

29 (e) The department shall receive and account for all money
30 received pursuant to this article and shall deposit it with the
31 Treasurer who shall keep the money in a separate fund to be
32 known as the "Registered Environmental Health Specialist
33 Fund," that fund is hereby created.

34 (f) Notwithstanding Section 13340 of the Government Code,
35 funds collected pursuant to the provisions of this article are
36 continuously appropriated without regard to fiscal year to pay
37 expenses of the department to administer the provisions of this
38 article.

39 (g) The following fees are hereby established and shall be
40 annually adjusted as required by subdivision (b):

1 (1) Application fee—~~sixty-nine dollars (\$69)~~ fee—*ninety-five*
2 *dollars (\$95)*.

3 (2) Examination fee—~~sixty dollars (\$60)~~ fee—*one hundred*
4 *and twenty-six dollars (\$126)*.

5 (3) Biennial renewal fee—~~active eighty-seven dollars (\$87)~~
6 *fee—active—one hundred and seventy-five dollars (\$175)*.

7 SEC. 20. Section 106722 is added to the Health and Safety
8 Code, to read:

9 106722. The department may deny, amend, revoke, suspend,
10 or restrict a registration issued pursuant to this article when, in
11 the judgment of the department, a person's background or
12 behavior bears materially on that person's ability to safely
13 perform activities under the registration.

14 SEC. 21. Section 106877 is added to the Health and Safety
15 Code, to read:

16 106877. The department may deny, amend, revoke, suspend,
17 or restrict a certification issued under this article when, in the
18 judgment of the department, a person's background or behavior
19 bears materially on that person's ability to safely perform
20 activities under the certification. The department may conduct
21 informal proceedings pursuant to this section. The results of the
22 informal proceedings may be appealed to an administrative law
23 judge. Unless appealed within 30 days, the findings of the
24 department in the informal proceedings shall be final.

25 SEC. 22. Section 116735 of the Health and Safety Code is
26 amended to read:

27 116735. (a) In order to carry out the purposes of this
28 chapter, any duly authorized representative of the department
29 may, at any reasonable hour of the day, do any of the following:

30 (1) Enter and inspect any public water system or any place
31 where the public water system records are stored, kept, or
32 maintained.

33 (2) Inspect and copy any records, reports, test results, or other
34 information required to carry out this chapter.

35 (3) Set up and maintain monitoring equipment for purposes of
36 assessing compliance with this chapter.

37 (4) Obtain samples of the water supply.

38 (5) Photograph any portion of the system, any activity, or any
39 sample taken.

(b) The department shall inspect each public water system at least annually, and shall provide an opportunity for a representative of the public water system to accompany the representative of the department during the inspection of the water system, as follows:

(1) A system with any surface water source with treatment shall be inspected annually.

(2) A system with any groundwater source subject to treatment with only groundwater sources shall be inspected biennially.

(3) A system with only groundwater sources not subject to treatment shall be inspected every three years.

(c) Nothing in this section shall prohibit the department from inspecting public water systems on a more frequent basis. An opportunity shall be provided for a representative of the public water system to accompany the representative of the department during the inspection of the water system.

(e)

(d) It shall be a misdemeanor for any person to prevent, interfere with, or attempt to impede in any way any duly authorized representative of the department from undertaking the activities authorized by subdivision (a).

~~SEC. 14.~~

SEC. 23. Section 5405 of the Welfare and Institutions Code is amended to read:

5405. (a) This section shall apply to each facility licensed by the State Department of Mental Health, or its delegated agent, on or after January 1, 2003. For purposes of this section, "facility" includes psychiatric health facilities, as defined in Section 1250.2 of the Health and Safety Code, licensed pursuant to Chapter 9 (commencing with Section 77001) of Division 5 of Title 22 of the California Code of Regulations and mental health rehabilitation centers licensed pursuant to Chapter 3.5 (commencing with Section 781.00) of Division 1 of Title 9 of the California Code of Regulations.

(b) (1) (A) Prior to the initial licensure or first renewal of a license on or after January 1, 2003, of any person to operate or manage a facility specified in subdivision (a), the department shall submit fingerprint images and related information pertaining to the applicant or licensee to the Department of Justice for purposes of a criminal record check, as specified in

1 paragraph (2), at the expense of the applicant or licensee. The
2 Department of Justice shall provide the results of the criminal
3 record check to the department. The department may take into
4 consideration information obtained from or provided by other
5 government agencies. The department shall determine whether
6 the applicant or licensee has ever been convicted of a crime
7 specified in subdivision (c). The department shall submit
8 fingerprint images and related information each time the position
9 of administrator, manager, program director, or fiscal officer of a
10 facility is filled and prior to actual employment for initial
11 licensure or an individual who is initially hired on or after
12 January 1, 2003. For purposes of this subdivision, “applicant”
13 and “licensee” include the administrator, manager, program
14 director, or fiscal officer of a facility.

15 (B) Commencing January 1, 2003, upon the employment of, or
16 contract with or for, any direct care staff the department shall
17 submit fingerprint images and related information pertaining to
18 the direct care staff person to the Department of Justice for
19 purposes of a criminal record check, as specified in paragraph
20 (2), at the expense of the direct care staff person or licensee. The
21 Department of Justice shall provide the results of the criminal
22 record check to the department. The department shall determine
23 whether the direct care staff person has ever been convicted of a
24 crime specified in subdivision (c). The department shall notify
25 the licensee of these results. No direct client contact by the
26 trainee or newly hired staff, or by any direct care contractor shall
27 occur prior to clearance by the department unless the trainee,
28 newly hired employee, contractor, or employee of the contractor
29 is constantly supervised.

30 (C) Commencing January 1, 2003, any contract for services
31 provided directly to patients or residents shall contain provisions
32 to ensure that the direct services contractor submits to the
33 department fingerprint images and related information pertaining
34 to the direct services contractor for submission to the Department
35 of Justice for purposes of a criminal record check, as specified in
36 paragraph (2), at the expense of the direct services contractor or
37 licensee. The Department of Justice shall provide the results of
38 the criminal record check to the department. The department
39 shall determine whether the direct services contractor has ever

1 been convicted of a crime specified in subdivision (c). The
2 department shall notify the licensee of these results.

3 (2) If the applicant, licensee, direct care staff person, or direct
4 services contractor specified in paragraph (1) has resided in
5 California for at least the previous seven years, the department
6 shall only require the submission of one set of fingerprint images
7 and related information. The Department of Justice shall charge a
8 fee sufficient to cover the reasonable cost of processing the
9 fingerprint submission. ~~Fingerprints submitted pursuant to this~~
10 ~~subdivision include fingerprints taken by the use of live-scan~~
11 ~~technology. When Fingerprints and related information~~
12 ~~submitted pursuant to this subdivision include fingerprint images~~
13 ~~captured and transmitted electronically. When requested, the~~
14 Department of Justice shall forward one set of fingerprint images
15 to the Federal Bureau of Investigation for the purpose of
16 obtaining any record of previous convictions or arrests pending
17 adjudication of the applicant, licensee, direct care staff person, or
18 direct services contractor. The results of a criminal record check
19 provided by the Department of Justice shall contain every
20 conviction rendered against an applicant, licensee, direct care
21 staff person, or direct services contractor, and every offense for
22 which the applicant, licensee, direct care staff person, or direct
23 services contractor is presently awaiting trial, whether the person
24 is incarcerated or has been released on bail or on his or her own
25 recognizance pending trial. The department shall request
26 subsequent arrest notification from the Department of Justice
27 pursuant to Section 11105.2 of the Penal Code.

28 (c) (1) The department shall deny any application for any
29 license, suspend or revoke any existing license, and disapprove
30 or revoke any employment or contract for direct services, if the
31 applicant, licensee, employee, or direct services contractor has
32 been convicted of, or incarcerated for, a felony defined in
33 subdivision (c) of Section 667.5 of, or subdivision (c) of Section
34 1192.7 of, the Penal Code, within the preceding 10 years.

35 (2) The application for licensure or renewal of any license
36 shall be denied, and any employment or contract to provide direct
37 services shall be disapproved or revoked, if the criminal record of
38 the person includes a conviction in another jurisdiction for an
39 offense that, if committed or attempted in this state, would have

1 been punishable as one or more of the offenses referred to in
2 paragraph (1).

3 (d) (1) The department may approve an application for, or
4 renewal of, a license, or continue any employment or contract for
5 direct services, if the person has been convicted of a
6 misdemeanor offense that is not a crime upon the person of
7 another, the nature of which has no bearing upon the duties for
8 which the person will perform as a licensee, direct care staff
9 person, or direct services contractor. In determining whether to
10 approve the application, employment, or contract for direct
11 services, the department shall take into consideration the factors
12 enumerated in paragraph (2).

13 (2) Notwithstanding subdivision (c), if the criminal record of a
14 person indicates any conviction other than a minor traffic
15 violation, the department may deny the application for license or
16 renewal, and may disapprove or revoke any employment or
17 contract for direct services. In determining whether or not to
18 deny the application for licensure or renewal, or to disapprove or
19 revoke any employment or contract for direct services, the
20 department shall take into consideration the following factors:

21 (A) The nature and seriousness of the offense under
22 consideration and its relationship to the person's employment,
23 duties, and responsibilities.

24 (B) Activities since conviction, including employment or
25 participation in therapy or education, that would indicate changed
26 behavior.

27 (C) The time that has elapsed since the commission of the
28 conduct or offense and the number of offenses.

29 (D) The extent to which the person has complied with any
30 terms of parole, probation, restitution, or any other sanction
31 lawfully imposed against the person.

32 (E) Any rehabilitation evidence, including character
33 references, submitted by the person.

34 (F) Employment history and current employer
35 recommendations.

36 (G) Circumstances surrounding the commission of the offense
37 that would demonstrate the unlikelihood of repetition.

38 (H) The granting by the Governor of a full and unconditional
39 pardon.

40 (I) A certificate of rehabilitation from a superior court.

1 (e) Denial, suspension, or revocation of a license, or
2 disapproval or revocation of any employment or contract for
3 direct services specified in subdivision (c) and paragraph (2) of
4 subdivision (d) are not subject to appeal, except as provided in
5 subdivision (f).

6 (f) After a review of the record, the director may grant an
7 exemption from denial, suspension, or revocation of any license,
8 or disapproval of any employment or contract for direct services,
9 if the crime for which the person was convicted was a property
10 crime that did not involve injury to any person and the director
11 has substantial and convincing evidence to support a reasonable
12 belief that the person is of such good character as to justify
13 issuance or renewal of the license or approval of the employment
14 or contract.

15 (g) A plea or verdict of guilty, or a conviction following a plea
16 of nolo contendere shall be deemed a conviction within the
17 meaning of this section. The department may deny any
18 application, or deny, suspend, or revoke a license, or disapprove
19 or revoke any employment or contract for direct services based
20 on a conviction specified in subdivision (c) when the judgment of
21 conviction is entered or when an order granting probation is
22 made suspending the imposition of sentence.

23 (h) (1) For purposes of this section, “direct care staff” means
24 any person who is an employee, contractor, or volunteer who has
25 contact with other patients or residents in the provision of
26 services. Administrative and licensed personnel shall be
27 considered direct care staff when directly providing program
28 services to participants.

29 (2) An additional background check shall not be required
30 pursuant to this section if the direct care staff or licensee has
31 received a prior criminal history background check while
32 working in a mental health rehabilitation center or psychiatric
33 health facility licensed by the department, and provided the
34 department has maintained continuous subsequent arrest
35 notification on the individual from the Department of Justice
36 since the prior criminal background check was initiated.

37 (3) When an application is denied on the basis of a conviction
38 pursuant to this section, the department shall provide the
39 individual whose application was denied with notice, in writing,
40 of the specific grounds for the proposed denial.

1 (4) State departments and agencies may share information
2 regarding final administrative actions taken by individual
3 departments.

4 (5) State departments and agencies may take action with
5 respect to applicants and licensees based on information obtained
6 from other state departments and agencies if the information
7 indicates that the conduct of the applicant or licensee has been
8 inimical to the clients or the public.

9 *SEC. 24. Section 9719 of the Welfare and Institutions Code is*
10 *amended to read:*

11 9719. The office shall sponsor a meeting of representatives of
12 approved organizations at least twice each year. The office shall
13 provide training to these representatives as appropriate. Prior to
14 acceptance by the office as designated ombudsmen, individuals
15 shall receive a minimum of 36 hours of training ~~and~~, be approved
16 by the office, *and obtain a criminal record clearance that meets*
17 *the same standards for clearance as required for direct care staff*
18 *in long-term health care facilities who submit fingerprints*
19 *pursuant to Section 1338.5 of the Health and Safety Code. A*
20 *criminal record clearance shall be completed prior to*
21 *designation as an ombudsman and shall be complete when the*
22 *State Ombudsman has obtained the person's criminal record*
23 *information from the Department of Justice and has determined*
24 *that the person is not disqualified from engaging in the activity*
25 *for which the clearance is required. Applicants for designation*
26 *as an ombudsman shall be responsible for any cost associated*
27 *with transmitting the fingerprint images. Upon acceptance,*
28 *designated ombudsmen shall receive a card issued by the*
29 *department identifying the bearer as an official ombudsman.*
30 *Each ombudsman shall receive a minimum of 12 hours of*
31 *additional training annually.*

32 ~~SEC. 15.~~

33 *SEC. 25.* No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the
38 penalty for a crime or infraction, within the meaning of Section
39 17556 of the Government Code, or changes the definition of a

1 crime within the meaning of Section 6 of Article XIII B of the
2 California Constitution.

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5 **CORRECTIONS:**

6 **Text — Pages 20 & 39.**

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